

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 22-11068 (JTD)
FTX TRADING LTD., et al.,
(Jointly Administered)
Debtors.
FTX TRADING LTD., WEST
REALM SHIRES SERVICES, INC.,
AND ALAMEDA RESEARCH LTD.,
Plaintiffs,
-against- Adv. Pro. No. 23-50759 (JTD)
MIRANA CORP., BYBIT FINTECH
LTD., TIME RESEARCH LTD.,
SIN WEI "SEAN" TAN, WEI LIN
"GERMAINE" TAN, WEIZHENG YE,
AND NASHON LOO SHUN LIANG,
Defendants.
ALAMEDA RESEARCH LLC, FTX
TRADING LTD., WEST REALM
SHIRES, INC., AND WEST
REALM SHIRES SERVICES INC.
(D/B/A FTX.US),
Plaintiffs,
v.
DANIEL FRIEDBERG,
Defendant.
Courtroom No. 5
824 North Market Street
Wilmington, Delaware 19801
Wednesday, January 31, 2024
10:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commence at 10:34 a.m.)

2 (Call to Order of the Court)

3 THE COURT: Good morning, everyone. Thank you.
4 Please be seated.

5 Before we begin, Mr. Landis, I want to lay out how
6 we are going to proceed today. First, I am going to give the
7 ruling that I said I would give on the burden of proof issue
8 for the IRS estimation hearing. We will do that first and
9 get that out of the way.

10 As for timing, today we will take a break for
11 lunch at 12:10. I have an internal meeting I have to attend.
12 We will take an hour lunch break and then we will come back.
13 We will end at 5 p.m. today. I am assuming we will finish
14 today, but if we don't I have tomorrow and Friday available
15 so we can continue the hearing if we need to.

16 Today, for this hearing, we took a little bit
17 different approach on access to the Zoom. Under our new
18 procedures parties and counsel have access to the live Zoom.
19 They can see the proceedings on the Zoom call. Those who are
20 not participants normally would sign up and receive a
21 telephone number to dial in. In this case we have, and
22 because we expected a large number of people interested, a
23 YouTube channel and those who tried to sign up for the phone
24 number received an email saying go to the YouTube channel.

25 During the course of the hearing, if we have --

1 and I am going to ask people who are on Zoom please keep your
2 video off unless I call on you. For people on the Zoom, when
3 witnesses are testifying under our new procedures established
4 by the Judicial Council, they cannot continue to listen. So,
5 they will be disconnected. I will make an announcement ahead
6 of time. Apparently it takes a few minutes for that to
7 happen.

8 So, when the witnesses are called, we will take a
9 short five-minute recess to allow the YouTube channel to be
10 turned off. Then once the witnesses are done, we will
11 reestablish the YouTube channel and bring those people back
12 in, then we will take another short break to allow that time
13 to happen.

14 When signing up we had a large number of people
15 who did not follow the procedures on the website that you
16 sign up by 4 o'clock the day before the hearing. Close to
17 100, I think, signed up late. I am not going to allow that
18 to happen in the future. If you don't sign up by 4 o'clock
19 the day before you are not going to be able to participate.
20 So, make sure you pay attention.

21 Then one other issue that I will get to after I do
22 my reading of the bench ruling on the IRS issue, I am going
23 to make a preliminary ruling in this matter based on the
24 filings that were provided to the Court. I don't need oral
25 argument on that issue, so I will let you know what that

1 issue is and that has to do with the time for when estimation
2 is established, when to establish the value of a claim. So,
3 I will address that issue as well.

4 First, let's get to the bench ruling on the IRS
5 issue. The question before me today is which party should
6 bear the burden of proof in the upcoming Section 502(c)
7 estimation of the IRS's claim against the debtors.

8 As Judge Swain noted in her opinion, estimating
9 the net revenue claim of certain bondholders in financial
10 oversight and management board for Puerto Rico, 2023 Westlaw
11 4189779 at Page 7, Footnote 11, District Court for the
12 District of Puerto Rico June 26th, 2023:

13 "It is not clear that the Court has to address
14 evidentiary burden at all in the context of an estimation
15 hearing where the predication of hypothetical outcomes is
16 committed to the Court's discretion."

17 However, as Judge Swain did in her case, I will
18 provide guidance to the parties on how the evidentiary
19 hearing should proceed and allocate the burden of proof.

20 Following an acute onset of financial distress in
21 November 2022 the debtors commenced this bankruptcy
22 proceeding when they voluntarily filed for relief under
23 Chapter 11 of the Bankruptcy Code. By now it is widely known
24 that, as debtors' counsel writes that: "The debtors
25 prepetition management utterly failed to implement corporate

1 controls and left behind a complete absence of trustworthy
2 financial information," that is D.I. 4204 at 6, "creating
3 uncertainty as to the debtors' potential tax liabilities."

4 The IRS filed proofs of claim in April 2023
5 claiming approximately \$44 billion in tax liabilities. From
6 the outset the IRS noted that these values are estimates that
7 consider information from the debtors' tax returns along with
8 the fact that the debtors were actively engaged in fraudulent
9 activity. As such, the amounts claimed by the IRS were
10 designated to be adjusted as necessary. The IRS amended some
11 of its claims in November 2023 to reduce the total to
12 approximately \$24 billion and more recently to \$8 billion.

13 In response, the debtors filed a motion to
14 establish a schedule and appropriate procedures for
15 estimating the IRS claims pursuant to Section 502(c) of the
16 Code. A hearing was conducted on December 13th, 2023, where
17 I decided that estimation was appropriate under Section
18 502(c) because the IRS's claim was unliquidated.

19 At the hearing I requested additional briefing
20 from each party specifically on the issue of which party
21 bears the burden of proving or disproving the validity of the
22 IRS's estimates. Further argument on the burden of proof
23 issue was presented during the January 17th, 2024 status
24 conference. The IRS argues that the burden of proof rests
25 with the debtors because the IRS is entitled to a presumption

1 of correctness for all reasonable estimates it makes. The
2 debtors disagree, contending that the IRS bears the burden of
3 proof because:

4 One, the presumption of correctness only applies
5 to circumstances where the IRS has issued a formal deficiency
6 assessment, which has not been done here and;

7 Two, because they believe that the estimated value
8 of the claims qualify as arbitrary and excessive.

9 Because it is impossible for me to determine from
10 the face of the IRS's proofs of claim the basis for its
11 conclusion that the debtors owe an estimated \$8 billion of
12 taxes, I will require the IRS to first present its case
13 setting forth the basis for its estimation. The debtors will
14 then have the opportunity to present evidence to contradict
15 the IRS's position and the IRS shall have a chance to rebut
16 the debtors' evidence. For the reasons discussed below, the
17 burden of proof at the estimation hearing will rest on the
18 IRS.

19 At the outset it should be noted that bankruptcy
20 judges are afforded substantial discretion in directing the
21 estimation process. That is Bittner v. Borne Chemical
22 Company, 691 F.2d 134 at 135, Third Circuit 1982. The
23 bankruptcy code itself is "Silent as to the manner in which
24 contingent or unliquidated claims are to be estimated." The
25 Courts have acknowledged that estimation is "At best an

1 imprecise and uncharted process." That is In Re Frascella
2 Enterprises, Inc., 360 B.R. 435 at 458, Eastern District of
3 Pennsylvania 2007.

4 This Court has maintained that "Bankruptcy courts
5 may use whatever method is best suited to the case as long as
6 the procedure is consistent with fundamental bankruptcy
7 policies which require speed and efficiency." In Re Pacific
8 Sunwear of California, Inc., 216 Westlaw 4250681 at Page 3,
9 Bankruptcy District of Delaware August 8th, 2016.

10 However, there are a few generally accepted
11 principals that govern the burden of proof to be used in
12 estimation procedures. First, it has been widely noted that
13 "The estimation process is merely a microcosm of the ordinary
14 claims determination process." That is In Re FGR, Inc., 121
15 B.R. 451 at 456, Bankruptcy Eastern District of Pennsylvania
16 1990, and In Re Financial Oversight and Management Board,
17 2023 Westlaw 4189779 at 7.

18 Accordingly, the burden of proof should be the
19 same in both claim estimation and a proceeding to determine
20 the merits of the claim. Second, Courts frequently recognize
21 that "Where non-bankruptcy law identifies the burden of
22 proof, the ultimate burden of proof for a particular claim is
23 determined consistent with that law." In Re Stone & Webster,
24 Inc., 457 B.R. 588 at 608, Bankruptcy District of Delaware
25 2016.

1 Although Section 502 of the Bankruptcy Code and
2 Bankruptcy 3001(f) establish a burden shifting scheme
3 predicated upon the proper filing of a proof of claim courts
4 recognize that "Bankruptcy does not alter the burden of proof
5 imposed by applicable non-bankruptcy law." In Re Refco
6 Public Commodity Pool, L.P., 554 B.R. 737 at 741, Bankruptcy
7 District of Delaware 2016, citing Wiley v. Illinois
8 Department of Revenue, 530 U.S. 15 at 21, 2000 Supreme Court
9 case.

10 As both parties have pointed out, this idea traces
11 back to Wiley v. Illinois Department of Revenue where the
12 Supreme Court wrote: "Creditors entitlements in bankruptcy
13 arise in the first instance from the underlying substantive
14 law creating the debtor's obligation." In the context of
15 claims litigation "The burden of proof is a substantive
16 aspect of a claim," 530 U.S. 15 at 20 to 21.

17 Taken together these principals require "A
18 bankruptcy court adjudicating a tax claim by the IRS to apply
19 the burden of proof rubric normally applied under tax law."
20 In Re Desert Capital REIT, Inc., 2014 Westlaw 3907972 at Page
21 11, Bankruptcy Appellate Ninth Circuit August 11th, 2014,
22 quoting Nelson vs. United States, In Re Olshan, 356 F.3d 1078
23 at 1084, Ninth Circuit 2004.

24 While there are no clear examples of the
25 allocation of the burden of proof between the government and

1 a taxpayer specifically setting up a bankruptcy claims
2 estimation the law is clear that the burden falls on the IRS
3 in this case: "In an action by the government for collection
4 of taxes the burden of proof is upon the United States under
5 the rule that the party that alleges must prove," Mertens Law
6 of Federal Tax Income, 49E:54, 2023; Psaty v. United States,
7 442 F.3d 1154 at 1159, Third Circuit 1971.

8 The IRS meets its initial burden by introducing
9 evidence of properly certified tax assessment. The tax
10 assessment is afforded a "presumption of correctness" which
11 shifts the burden to the taxpayer to disprove the accuracy of
12 the government's assessment. The majority of tax collection
13 cases includes such an assessment and so in the normal case
14 the taxpayer usually has the burden of disproving the IRS's
15 assessment; see In Re Anastasio v. CIR, 794 F.2d 884 at 886-
16 88, Third Circuit 1986.

17 Because there has been no assessment here the IRS
18 bears the burden of proven the accuracy of the figures
19 contained in its proofs of claim. In Re Brown, 169 B.R. 59
20 at 61, Southern District of Iowa 1994: "This Court believes
21 that when taxes and penalties have not been assessed, the
22 better rule is that the IRS bears the ultimate burden of
23 proof."

24 Also, U.S. v. Kontaratos, 36 B.R. 924-931,
25 District of Maine 1984: "The presumption of correctness is

1 accorded a proof of claim only because there has been a valid
2 assessment." The policy behind the presumption of
3 correctness also supports this conclusion which maintains
4 that the existence of the formal assessment itself implies
5 "that the IRS commissioner who made the assessment has done
6 so with sufficient evidence at his disposal." In Re Fidelity
7 American Financial Corp., 1990 Westlaw 299418 at 4,
8 Bankruptcy Eastern District of Pennsylvania 1990.

9 Under this logic the IRS's estimates cannot be
10 presumed correct as there is no indication that the values of
11 its claims are supported by an equally sufficient basis as
12 the values informal assessments. The United States offers
13 the Greco and In Re Fidelity cases for the proposition that
14 "The presumption of correctness also applies to estimated tax
15 liabilities." That is D.I. 5410 at 4.

16 The Greco case isn't applicable here because in
17 that case the Court examined the permissibility of estimated
18 values within a formal tax assessment, 380 F. Supp. 2d 598 at
19 612, Middle District of Pennsylvania 2005. While it is
20 settled that the IRS may use estimations within its formal
21 assessments, U.S. v. Fior D'Italia, Inc., 536 U.S. 238 at 245
22 (2002), there has been no formal assessment here.

23 I am also unpersuaded by the government's
24 implication of In Fidelity for the notion that "Unassessed
25 taxes presented in a proof of claim should be presumed

1 correct," D.I. 5410 at 4. That case acknowledges one example
2 of a Court treating a proof of claim as though it were an
3 assessment but the Court ultimately refused to attach the
4 presumption of correctness to the proof of claim precisely
5 because "There had been no prepetition IRS tax assessment,"
6 1990 Westlaw 299418 at 6, Bankruptcy Eastern District of
7 Pennsylvania, February 8th, 1990.

8 For these reasons I disagree with the United
9 States contention that all reasonable IRS estimates made
10 without formal assessments are entitled to a presumption of
11 correctness. Claim estimation of bankruptcy is an imprecise
12 process that is neither designed nor intended to yield exact
13 numbers. Nevertheless, I conclude that the IRS bears the
14 burden of substantiating suggested estimation of the debtors'
15 tax liabilities where there has been no formal assessment.

16 Any questions?

17 (No verbal response)

18 THE COURT: One other issue before we get started.
19 On the question of the estimation hearing for today I
20 received a number of objections that the debtors selection of
21 the petition date as the date for determining the value of
22 the digital assets that are being estimated today is
23 inappropriate because it's unfair; however, the code is very
24 clear. The code says that a claim is to be determined in
25 U.S. dollars as of the petition date. I think that is Section

1 502(b) .

2 Its no different in the context of a determination
3 of the validity of a claim as it is for the estimation
4 hearing under 502(c). There are limited exceptions to this
5 requirement, none of which are applicable here and,
6 therefore, based on the filings that I received, and the
7 objections that I reviewed, the debtors' position as well, I
8 conclude that the debtors' use of the petition date as the
9 date for determining the value of the digital asset claims is
10 appropriate. I have no wiggle room on that. The code says
11 what it says and I am obligated to follow the code.

12 I understand those who have filed objections,
13 mostly, I think all of them were pro se litigants, feel that
14 this is unfair to them because of value of certain of the
15 digital assets may have increased since the filing of the
16 petition date. The opposite is also true, some of the
17 digital assets decreased in value since the petition date.
18 Congress determined that we have to pick a date and they
19 chose the petition date. And, therefore, I am bound by that
20 obligation under 502.

21 So, all objections to the timing of the date upon
22 which the debtors chose to determine the estimated value of
23 the claims are overruled on that basis; therefore, I don't
24 need to hear argument on those issues.

25 Mr. Landis.

1 MR. LANDIS: Thank you, Your Honor. May I please
2 the Court, Adam Landis from Landis Rath & Cobb on behalf of
3 FTX Trading Ltd., and its affiliated debtors.

4 Your Honor just cleared out a number of opening
5 comments I was going to make about the manner in which we
6 proceed.

7 THE COURT: Sorry for stealing your thunder.

8 MR. LANDIS: No, not at all. We thank you very
9 much for the well-reasoned opinion and ruling with respect to
10 the digital assets motion.

11 With that, Your Honor, we can go through the
12 agenda relatively quickly. Items 1 through 9 have been
13 adjourned. Item No. 10 was withdrawn. Items 11 through 23
14 have been resolved with orders entered and the debtors are
15 grateful for the Court's having reviewed those matters and
16 entered many, many orders.

17 With respect to Item No. 24, the debtors have a
18 status update that we would like to give and I would yield
19 the podium to Mr. Dietderich for that. I understand as well
20 that counsel to the joint official liquidators in the Bahamas
21 they want to give a status update in that case. So, after
22 Mr. Dietderich we would propose to have them give their
23 update and then we would proceed with No. 25, the digital
24 assets motion.

25 THE COURT: Okay. Thank you.

1 MR. LANDIS: Thank you, Your Honor.

2 MR. DIETDERICH: Thank you, Mr. Landis.

3 For the record Andy Dietderich, Sullivan &
4 Cromwell.

5 May I please the Court, I have an update on the
6 status of the case broadly this morning. The financial
7 situation of the debtors today is radically different then it
8 was when the case began. We remember what it was like in
9 November 2022. This was an emergency filing on no notice. It
10 took us weeks to have even a first day hearing. We started
11 with no reliable digital asset security, no adequate books
12 and records, no clear list of who worked at the company, no
13 idea even who were the officers and directors of some of the
14 applicable legal entities. We had boards of entities that
15 had never met. There was a bank run on the exchanges and a
16 bank run on Alameda.

17 In response assets have transferred to favored
18 insiders at the last minute, entities and assets have been
19 seized by regulators. We had a pending insolvency in
20 Australia and a pending insolvency in the Bahamas. Two
21 different black hat hacks had stolen hundreds of millions in
22 cryptocurrency. We had FBO customer accounts intermingled
23 with operating accounts. We had no reliable list of our
24 banks or bank accounts. We had billions of assets registered
25 in the names of friends, romantic interests, relatives, and

1 employees. We had a business record that was largely on
2 signal a disappearing messaging app or in the head of Mr.
3 Bankman-Fried. And Mr. Bankman-Fried was not only in
4 custody, but had declared "bleep the regulators, all I have
5 to do is win a jurisdictional war with Delaware."

6 Its been a very long 15 months. On behalf of Mr.
7 Ray and the entire team I would like to say two things:

8 First, we recognize the profile that this case
9 require scrutiny and we welcome it. We will continue to be
10 as transparent as our duties allow.

11 Second, the ongoing effort to provide recovery to
12 victims here has been and continues to be some of the most
13 rewarding work any of us will ever do as restructuring
14 professionals. It will be one for the history books. And
15 today we can now cautiously predict some measure of success.

16 Based on our results to date and current
17 projections we anticipate filing a disclosure statement in
18 February describing how customers and general unsecured
19 creditors, customers and general unsecured creditors with
20 allowed claims, will eventually be paid in full. I would
21 like the Court and stakeholders to understand this not as a
22 guarantee, but as an objective. There is still a great
23 amount of work and risk between us and that result, but we
24 believe the objective is within reach and we have a strategy
25 to achieve it.

1 I would like to drill down on our assets, our
2 liabilities, and the upcoming schedule. First are assets.
3 We have had some disappointment. We had very discouraging
4 financial results to our initial M&A exercises. Businesses
5 FTX bought for hundreds of millions of dollars shortly before
6 the petition time proved to have little substantial value and
7 few interested buyers.

8 LedgerX was a horrible investment by FTX. It was
9 sold for only a fraction of its acquisition price. Embed was
10 worse and could not be sold at all. A related disappointment
11 is FTX 2.0. We still have valuable customer data and
12 information to monetize, but after an exhausted effort no
13 investor has been ready to commit the needed capital to a
14 restart of the offshore exchange, nor has a buyer emerged for
15 that exchange as a going concern.

16 Why? The exchange, as I said before, was not what
17 it appeared to be. It existed for only a few brief years and
18 never required substance. The costs and risks of creating a
19 viable exchange from what Mr. Bankman-Fried left in the
20 dumpster were simply too high. So, our current Chapter 11
21 plan does not include the expectation of any recoveries from
22 a restart of FTX.com.

23 We know there will always be true believers out
24 there and if there still are they should call Perella and
25 make a bid. We know that for a time FTX played a function in

1 the cryptocurrency markets or, at least, pretended to. If
2 that function is to be replaced it will be by new operators
3 with a new name and a better business plan and, hopefully,
4 much better business practices.

5 We, as an estate, will continue to consider all
6 options and are open to all options, but the plan of
7 confirmation, the plan of reorganization and the confirmation
8 process have to move forward now in order to give money back
9 to victims. That plan, as of today, does not currently
10 include a reboot. This will be important when Mr.
11 Glueckstein rises later today to speak about the value of FTT
12 and is reflected in the evidentiary record for the estimation
13 motion.

14 Despite these setbacks we have also benefited from
15 some even more significant positive developments. The first,
16 and perhaps the most important, is the runway created by the
17 jurisdiction of this Court and the fact that substantially
18 completely around the world our automatic stay has been
19 respected. The runway this created ended the bankruptcy and
20 allowed us the time necessary to deliberately create a new
21 balance sheet. We would be nowhere without the time -- this
22 time under the protection of the stay.

23 The second fact that we benefited from is the
24 profile of the case. We have been in front of you for
25 litigation matters, of course, but not as frequently as could

1 have been necessary. The main reason is that counterparties
2 have been cooperative in settlement negotiations and we have
3 secured hundreds of millions of dollars in voluntary turnover
4 without ever filing public complaints.

5 A third main benefit to recoveries has been our
6 relationship with governmental authorities. As I mentioned in
7 the early days of the case, Your Honor, in the first months
8 the board determined that spending estate resources to
9 cooperate with governmental investigations was in the best
10 interests of our debtors. This was expensive given the
11 extent of those government investigations and the sheer
12 number of them, but it is proven to be the right call.

13 There has been no criminal indictment of any
14 debtors (indiscernible). Governmental entities have worked
15 with us collaboratively all around the world to secure
16 assets. We hope to have a coordinated distribution scheme
17 for the value that we control and over a billion dollars
18 under the control of governmental authorities that avoids the
19 massive duplication of expenses that was seen in cases like
20 Madoff and other cases. Finally, and critically, we continue
21 to contemplate that over \$9 billion of governmental claims
22 for fines and penalties will be voluntarily subordinated to
23 victims in our plan of reorganization.

24 The fourth main benefit has been the special
25 nature of some of the relief granted by this Court. In

1 particular, the Court's advance approval of our digital asset
2 sales. This was novel relief, but --

3 THE COURT: Could you give me access as well,
4 please, so I can kick people off who don't follow my rules.
5 Thank you.

6 MR. DIETDERICH: Thank you, Your Honor. The
7 relief for digital assets in particular, Your Honor, was
8 novel relief but incredibly valuable. The advance approval of
9 our digital asset sales, rather than needing to bring
10 individual transactions back to the Court has allowed us to
11 liquidate our digital assets gradually based on day-to-day
12 trading opportunities with the sophistication of a major
13 trading operation. It has been a resounding success.

14 A fifth main benefit is that we have to date
15 avoided unnecessary litigation. There have been negotiated
16 understandings with government stakeholders including
17 discussions underway with the CFTC and the SEC. We have
18 settled our customer adversary proceedings subject to
19 confirmation of the plan. We have settlements early with the
20 JPL's in Australia and now happily with the JOL's in the
21 Bahamas.

22 I am pleased to add to this list today of
23 settlements, Your Honor, a settlement in principal that we
24 reached only a few days ago with the founders of FTX EU who,
25 as Your Honor knows, are litigation defendants and have filed

1 many motions. All these matters, these EU matters, will be
2 resolved by the settlement which is being documented and will
3 be presented shortly with the Court for approval.

4 Finally, Your Honor, the last benefit is the
5 incredible work done by Ernst & Young and the team on federal
6 taxes. Not surprisingly, FTX not only misappropriated funds
7 from the exchange and went to the casino, but they lost money
8 again, and again, and again. Despite all the work done to
9 maximize the recoverable value of assets and some individual
10 success stories the portfolio remains a net loser.

11 Accordingly, we believe we have billions of
12 dollars of lost carryforwards from previous bad investments
13 and subject, of course, to the resolution of our disputes
14 with the IRS, our plan does not currently expect that
15 creditor recoveries will be materially reduced by federal
16 taxes.

17 Taken together, the results of everyone's efforts
18 are substantial recoveries; not what was lost, but
19 substantial recoveries. This hopefully puts to bed the
20 alternative narrative that this business was just fine all
21 along, it was not. It was not a healthy business facing a
22 bankrupt. It did not have a mere liquidity crisis. It was
23 an irresponsible sham created by a convicted felon.

24 I would like to talk about claims. If our asset
25 recovery effort is on the verge of being a qualified success

1 the next equally immense challenge is claim management. When
2 I asked Mr. Coverick of A&M this morning to remind me the
3 amount of claims filed by our bar dates he told me it was
4 \$23.6 quintillion. I had to ask him how many zeros in
5 quintillion and the answer is 18. I then asked him to run
6 recoveries if we allowed all of those claims and everyone
7 would get a millionth of a percent. So, we have a job to do.

8 As I said earlier, we currently anticipate that we
9 will have sufficient funds to pay all allowed customer and
10 creditor claims in full. By "allowed," I mean claims of
11 exchange customers and general unsecured creditors for their
12 actual petition time losses, as calculated by the debtors.

13 And in order to have enough to pay these
14 legitimate claims, several assumptions have to hold. First,
15 and most critically, our relationship with governmental
16 stakeholders has to continue on its current path. In
17 particular, as I mentioned, we face over \$9 billion of
18 government claims that our plan contemplates will voluntarily
19 support subordinate to the pecuniary losses of victims. If
20 this does not happen and we have to contest the merits of
21 those governmental claims, recovery to customers and general
22 creditors could decrease dramatically.

23 Second, we have to successfully contest the
24 allowance of claims that we believe are not legitimate or, if
25 legitimate, should be subordinated to the losses of customers

1 and general creditors. There were several categories of
2 these contested claims, some Mr. Glueckstein will address
3 shortly. Other material disputed claims include claims
4 related to the OXY, MAPS, SRM, and other tokens, billions of
5 dollars in general allegations of fraud, and other claims the
6 debtors believe unsubstantiated, and, of course, the claims
7 asserted by the IRS.

8 The frustrating fact is that we must hold over \$10
9 billion in distributable value until both, a plan is
10 confirmed and this claims-resolution process is well
11 underway. We're not a bank and we should not be holding this
12 money any longer than is needed; it is not ours.

13 With respect to the first step, confirming a plan,
14 we are on schedule to file the disclosure statement next
15 month and proceed to a hearing and solicitation promptly,
16 subject, of course, to any need to wait on the resolution of
17 any other matters. As I mentioned, we currently expect the
18 disclosure statement to project that customers and creditors
19 will eventually be paid in full. I should say customers and
20 general unsecured creditors in our defined class of general
21 unsecured creditors will eventually be paid in full.

22 However, again, no one listening should hear that
23 and think funds can come immediately. In terms of making
24 distributions, neither confirmation, nor effectiveness is the
25 long pole in our tent. The long pole is now the quintillion

1 dollars of asserted claims. We cannot pay the legitimate
2 creditors until we resolve these claims.

3 Customarily, as your knows, debtors have waited
4 until after the plan is effective to begin claims
5 reconciliation in earnest. We're not waiting. As the Court
6 knows, we're not waiting. Our hope is that we can not only
7 have a plan become effective in 2024, but start making
8 material distributions, as well.

9 We recognize in advance that this will place
10 demands on the Court and we are sequencing matters to make
11 sure that the most material claims resolution matters are
12 first in the queue, such as the allowance of the dispute with
13 the IRS and the next motion with Mr. Glueckstein today.

14 Thank you, Your Honor.

15 THE COURT: Thank you.

16 Let me ask you while I have you up there, any
17 update on the issuance of the mandate by the Third Circuit in
18 the matter we talked about the other day?

19 MR. DIETDERICH: Let me ask for it exactly. Give
20 me a moment.

21 (Counsel confers)

22 THE COURT: Ms. Richenderfer might know, too.

23 MR. DIETDERICH: Your Honor, we expect to be
24 filing a consensual joint motion to the Third Circuit either
25 today or tomorrow.

1 THE COURT: All right. Anything different?

2 MS. RICHENDERFER: Thank you, Your Honor. Linda
3 Richenderfer, on behalf of the Office of the United States
4 Trustee.

5 Yes, we received the other day -- I think it was
6 yesterday, we received a draft motion from debtors' counsel
7 and it has been, I think, circulated to all interest holders,
8 including the Civil Appellate Division of DOJ, which
9 represents the U.S. Trustee's Office in terms of the appeal.
10 And we have conceptually agreed to it. I think it's being
11 under review right now and I would anticipate it's going to
12 be filed either today or tomorrow.

13 THE COURT: Okay. Great. Thank you.

14 MS. RICHENDERFER: We would hope, therefore, that
15 the Third Circuit would react quickly to such an event.

16 THE COURT: Okay. Thank you.

17 MR. DIETDERICH: Thank you, Your Honor.

18 Any other questions?

19 THE COURT: Nope. No other questions. Thank you.

20 MR. DIETDERICH: Okay. Thank you.

21 I think I'll cede the podium to Mr. Shore for
22 the -- or excuse me --

23 MS. BAKEMEYER: Bakemeyer.

24 MR. DIETDERICH: -- Bakemeyer -- I knew the name,
25 just not the pronunciation --

1 MS. BAKEMEYER: No, it's fine.

2 MR. DIETDERICH: -- for the JOLs, thank you.

3 THE COURT: Thank you.

4 MS. BAKEMEYER: Good morning, Your Honor. Brett
5 Bakemeyer of White & Case on behalf of the Joint Official
6 Liquidators of FTX Digital Markets Ltd.

7 First, we'd just like to thank Your Honor,
8 chambers, and the debtors for giving us just a bit of time
9 this morning on the calendar to provide the Court with an
10 update with respect to FTX Digital's Chapter 15 case. I know
11 there were a few, small to just call hurdles we had to get
12 through, so thank you.

13 Second, I do want to mention that two of your JOLs
14 are here today in the court, Mr. Brian Simms KC and Mr. Peter
15 Greaves. They've come to attend the estimation hearing,
16 which has an effect on what we'll adopt in the Bahamas.

17 I'll be brief. I would just like to speak to the
18 global settlement agreement that was recently entered into
19 and approved by Your Honor in the Bahamas court between FTX
20 DM and the debtors. I think it might be helpful to just make
21 a few notes for any dot com customers listening and I'll just
22 finish with some important dates and notes, with respect to
23 the Bahamas liquidation proceeding if that's all right with
24 Your Honor?

25 THE COURT: Thank you.

1 MS. BAKEMEYER: The GSA, the global settlement
2 agreement itself represents a monumental effort of the
3 parties to solve the bespoke and complicated cross-border
4 issue that warranted many months that it took for us to get
5 here. As explained in prior hearings, the issue from the
6 JOLs' perspective was always to define the scope of FTX DM's
7 assets and liabilities. That set up a conflict between the
8 debtors and the JOLs regarding whose assets were whose.

9 After Your Honor's urging to resolve the issues,
10 over the past six months, the JOLs and the debtors engaged in
11 hundreds of hours of negotiations to come up with a solution.
12 The global settlement is structured around one key concept:
13 that dot com customers have the same claim against both
14 estates. The solution embodied in the global settlement is
15 that customers can now have their claim resolved by their
16 choice of jurisdiction in a manner that will not prejudice
17 them and allows both estates to run their individual
18 processes in tandem.

19 More specifically, if any of the dot com customers
20 with a deposit on the FTX.com platform -- not the U.S., just
21 the international platform -- wish to have their claim
22 adjudicated, treated, and paid out by the Bahamas, they may
23 simply make an election on the debtors' ballots or submit a
24 proof of debt in the Bahamas. Once they make their election,
25 they release the other estate from that underlying claim.

1 Then the estate that the customer elects will
2 evaluate, adjudicate, and pay out that claim on, largely, the
3 same parameters. So, we'll be working hand-in-hand with the
4 debtors and the plan administrator with respect to the claims
5 adjudication process.

6 The dot com customers KYC procedures and
7 preference offer, if any, will also not change depending on
8 which estate they choose, and importantly, all dot com
9 customers will get substantially the same percentage of
10 recoveries on the substantially same timeline.

11 Now, I'd just like to note some important dates,
12 with respect to the Bahamas liquidation proceedings for Your
13 Honor.

14 THE COURT: Okay.

15 MS. BAKEMEYER: This past November on the
16 anniversary of the appointment of the JOLs, the Bahamas Court
17 sanctioned the winding-up order of FTX DM, placing it into
18 full liquidation and appointing the JOLs as official
19 liquidators. On January 22nd, 2022, [sic], just last Monday,
20 the JOLs had a hearing with the Bahamas Court and the global
21 settlement was approved by the Bahamas Court with all
22 ancillary (indiscernible).

23 Now that the global settlement has been Court-
24 approved, FTX DM can officially launch its claims process.
25 As a first step, the JOLs will host a meeting for FTX DM's

1 creditors, including dot com customers, sometime before
2 March 15th. Thereafter, customers can begin submitting
3 claims or proofs of them.

4 On or about the first week of April, FTX DM will
5 open up its claims portal online, allowing dot com customers
6 and other claimants to submit their proofs of debt. The
7 JOLs' claims portal will be substantially similar to the
8 debtors', so dot com customers experiences should be
9 seamless. The JOLs are working around the clock to get this
10 portal up and running, with the assistance of the debtors.

11 Also, as Mr. Dietderich just mentioned, in the
12 first week of April, the debtors are anticipating to send
13 their ballots out, which provides that mechanism for dot com
14 customers to elect into the Bahamas. The JOLs have set a bar
15 date of May 15th, 2024, which is also currently the debtors'
16 anticipated voting deadline on the plan. That's the proposed
17 date in which those ballots must be submitted. These dates
18 are intentionally matched up to help create a clean cutoff
19 for the Bahamas election.

20 We don't anticipate needing the Chapter 15 Court
21 for anything throughout this process, but we'll continue to
22 keep the Court apprised of any material developments as we go
23 along and we expect to have another status conference with
24 respect to the Chapter 15 case right around the plan
25 confirmation hearing.

1 And unless Your Honor has any questions, I'll cede
2 the podium back over to the debtors.

3 THE COURT: Okay. Thank you, no questions. I
4 appreciate the update.

5 MR. DIETDERICH: Your Honor, Andy Dietderich,
6 again for the record.

7 I should just add, given the sequence here of the
8 approval of the Bahamas settlement before the hearing, that
9 from our side, this is also a significant event and to thank,
10 on behalf of the debtors, the team for the JOLs, the three
11 JOLs, and, you know, all of their advisors, including, of
12 course, our colleagues at White & Case. The conversations,
13 as you know, were very contentious early, but I think as soon
14 as we came to the breakthrough idea that the customers, we
15 could create an architecture where the customers would
16 receive, effectively, the same recovery, regardless of where
17 they put in claims, we were indifferent whether, you know,
18 the claims were reconciled there or here, as long as there
19 are safeguards to make sure that no one is using the Bahamas
20 to recover more than they would recover in Chapter 11.

21 And once we had that central idea, the execution
22 of that idea by JOLs and their team was consummately
23 professional. They have been a pleasure to work with and
24 it's nice to be on a first-name basis.

25 (Laughter)

1 MR. DIETDERICH: So, thank you, Your Honor.

2 THE COURT: Thank you.

3 MR. HANSEN: Good morning, Your Honor. Kris
4 Hansen with Paul Hastings on behalf of the Official
5 Committee.

6 Your Honor, just a brief note. We want to say
7 froth Committee's perspective, we appreciate the update,
8 especially the effort and the contribution of all the core
9 parties in advancing the cases to this point. That includes
10 the principals and professionals for all of the parties.

11 We want to point out for the Court that when the
12 debtors, with respect to the update, it is the watershed
13 moment for the debtors, obviously, to report that the
14 disclosure statement will be filed in February, which will
15 include, likely, payment in full of all customer claims and
16 general unsecured creditors. But as Your Honor held, that
17 payment in full is based on the petition date values of those
18 claims.

19 Many of those claims are premised upon currencies
20 which declined dramatically in value in that tumultuous
21 period leading up to the petition date, so many customers and
22 creditors who are out there likely won't feel that that's a
23 true payment in full from where they started, but we
24 recognize that the petition date is the date that needs to be
25 used. As a result of that, Your Honor, all of the parties

1 are committed to continue to work together as we assess
2 assets and liabilities to try to determine a way to continue
3 to provide maximum recovery for all parties in interest.

4 Thank you, Your Honor.

5 THE COURT: Thank you, Mr. Hansen.

6 MR. GLUECKSTEIN: Good morning, Your Honor. For
7 the record, Brian Glueckstein, Sullivan & Cromwell, for the
8 debtors.

9 With that, I think that brings us to the remaining
10 agenda item on the today's calendar, which is the debtors'
11 motion to statement claims based on digital assets. Your
12 Honor, just to kind of set the stage and if a few
13 housekeeping points at the outset. As reflected in the
14 revised form of order that was filed this morning, and as
15 noted in our reply papers that we filed on Sunday, the
16 valuation component, assuming the estimation motion is
17 approved and proceeds today, the valuation component on a
18 small subset of four of the (indiscernible) tokens, MAPS,
19 OXY, SRM, and BOBA, as well as certain related tokens, locked
20 versions, and the like, as reflected in the schedule, are
21 being deferred to a future evidentiary hearing that we expect
22 to occur in consultation with chambers on March 20th, to
23 allow for the completion of discovery on those particular
24 digital assets.

25 The relief that we expect that that schedule, as

1 far as kind of a second evidentiary hearing on those discrete
2 digital assets would be, you know, a single hearing for those
3 assets that don't proceed to conclusion today, which, again,
4 from the debtors' perspective are four. The remainder of the
5 relief in the motion is we are proceeding with today, Your
6 Honor, and we appreciate Your Honor's ruling at the outset
7 and that certainly helps streamline the proceedings today.

8 We have been in discussions with numerous of the
9 objectors and various parties and are pleased to report that
10 the revised order that we filed this morning, by our
11 understanding -- and I know some folks will want to be heard
12 over the course of the day -- has fully resolved both, the
13 informal comments we received from the United States
14 Trustee's Office, as well as objections filed by Avalanche at
15 5685; the MDL plaintiffs at 5628; Three Arrows Capital, 5615;
16 and Sunil Kavuri, and others who joined in that, at Docket
17 5232.

18 We have also, as I noted, adjourned the objection
19 of the BOBA Foundation. Its BOBA token will go on the
20 evidentiary track, as well as TMSI, who is contesting SRM-
21 related issues. That litigation is proceeding -- that
22 discovery process, with respect to those tokens has
23 proceeded. The MAPS and OXY folks reached out to us very
24 early on to make clear what was necessary. We've been
25 working collaboratively to advance that process to that

1 hearing hopefully in March.

2 As far as today, Your Honor, unless the Court
3 would like to proceed in a different manner, we would propose
4 to address the evidentiary issues first and then proceed to
5 argument of the motion, including, with respect to the
6 various objections. The debtor has testimony in the form of
7 declarations, primarily, which I'll get to in a moment, from
8 three witnesses that we are offering in support of the relief
9 requested today. Each witness has submitted written
10 declarations as direct testimony, although, Your Honor, for
11 our expert, subject to the Court's preference, we would like
12 to briefly supplement those declarations with direct to
13 qualify them and their reports.

14 So, subject to Your Honor's views, we would be
15 prepared to proceed with the evidence.

16 THE COURT: Okay. Let's go ahead and proceed with
17 the evidence.

18 MR. GLUECKSTEIN: Okay. Thank you, Your Honor.

19 THE COURT: With that, as I said at the outset, we
20 need to take a short break so that we can disconnect the
21 audio from the YouTube channel and then we'll -- so let's
22 just take a very short, five-minute recess. Let's come back
23 at -- it's 11:22 -- let's come back at 11:27. We'll come
24 back.

25 MR. GLUECKSTEIN: Thank you, Your Honor.

1 (Recess taken at 11:22 a.m.)

2 (Proceedings resumed at 11:27 a.m.)

3 THE CLERK: All rise.

4 THE COURT: We're back, everybody. Please be
5 seated.

6 Mr. Glueckstein, do you want to call your first
7 witness.

8 MR. GLUECKSTEIN: Thank you, Your Honor.

9 Are you ready to proceed?

10 THE COURT: Yes.

11 MR. GLUECKSTEIN: Okay. Thank you.

12 Again, Brian Glueckstein, Sullivan & Cromwell, for
13 the debtors. The first witness the debtors are presenting in
14 support of the motion is Edward Mosley, a managing director
15 at Alvarez & Marsal. Mr. Mosley submitted a declaration at
16 Docket 6728-3 and we would respectfully request that that
17 declaration be admitted into evidence as his direct
18 testimony.

19 Mr. Mosley is in the courtroom today, available
20 for cross-examination.

21 THE COURT: Is there any objection?

22 (No verbal response)

23 THE COURT: It's admitted, without objection.

24 (Mosley Declaration received in evidence)

25 THE COURT: Anyone wish to cross-examine

1 Mr. Mosley?

2 MR. BIELLI: Good morning, Your Honor. Thomas
3 Bielli from Bielli & Klauder. I'm not admitted in this
4 court, but I was admitted *pro hac* last night. My law partner
5 David Klauder is present today.

6 Your Honor, we represent Aurus Tech, Ltd. We
7 filed an objection to the estimation motion.

8 Before we start, Your Honor, with the examination,
9 I did want to briefly status on our objection.

10 THE COURT: We're doing witnesses now. Do you
11 want to cross-examine the witness or not?

12 MR. BIELLI: Yes, Your Honor.

13 THE COURT: Okay. Have the witness come forward.
14 Please take the stand and remaining standing for
15 the oath.

16 THE CLERK: Please raise your right hand.

17 Please state your full name and spell your last
18 name for the record.

19 MR. MOSLEY: Edward William Mosley II, M-o-s-l-e-
20 y.

21 EDWARD W. MOSLEY, II, DEBTOR'S WITNESS, SWORN

22 THE WITNESS: I will.

23 THE CLERK: You may be seated.

24 THE COURT: Go ahead.

25 CROSS-EXAMINATION

1 BY MR. BIELLI:

2 Q Good morning, can you hear me okay?

3 A I can.

4 Q Thank you.

5 THE COURT: Hold on. Hold on.

6 Can you move closer to the microphone, Mr. Mosley.

7 Thank you.

8 BY MR. BIELLI:

9 Q I'll try again.

10 Can you hear me okay?

11 A I can.

12 Q Okay.

13 MR. BIELLI: Can Your Honor hear the witness okay?

14 THE COURT: Yes, thank you.

15 MR. BIELLI: Thank you, Your Honor.

16 May I proceed?

17 THE COURT: Yes.

18 BY MR. BIELLI:

19 Q What analysis have you conducted that the estimation
20 process, without the estimation process, there would be undue
21 delay on the bankruptcy cases?

22 A The analysis by which I drew that conclusion, there's a
23 bunch of different pieces. First, the recovery analysis,
24 that was built by Alvarez & Marsal under my direction and it
25 is a fairly detailed model of all the assets and claims of

1 the debtors. We make projections as to what we think the
2 assets will be recovered by the date effective and then what
3 will be remaining, and those are -- the other pieces are
4 valued. Then, the distributed proceeds to the allowed claims
5 proceed down the waterfall, based on the absolute priority
6 rule. So that's one piece.

7 Another piece would be that the claims resolution
8 analyses of all the claims filed and where we stand with
9 those, those claims, what objections are yet to be made and
10 what we think the claims will end up at.

11 And I guess the last piece, it's not truly analysis,
12 but knowledge of the process of adjudicating those claims of
13 how we would get there.

14 Q Let's talk about that last part, how you would get
15 there.

16 A Okay.

17 Q Was there an estimate on how long the claims
18 adjudication process would take under a normal or ordinary
19 procedure?

20 A We've talked through what would need to happen for our
21 plan, that includes the estimation motion. If by "normal,"
22 you're talking, what if we do it without the estimation
23 motion; is that what you're asking?

24 Q Well, let's back up, then.

25 What would you say the normal claims objection process

1 would be?

2 A In this case, with these facts and circumstances, I
3 think this is the right way to adjudicate the claims.

4 Q Are there other claims?

5 A Sure.

6 Q What are the other ways?

7 A The debtor could, for the 87,000 claims, you know, go
8 and try to adjudicate each one separately, instead of having
9 one motion to have all of the values for each of the, we call
10 them "tickers," you could just go one by one for each of
11 those claims filed and go through a process, by which you
12 say, the debtors object to your filed claim. We do give them
13 time to respond. We go through a discovery process and we
14 negotiate on whether or not we think we can come to some sort
15 of resolution. We have experts involved and we have, you
16 know, (indiscernible) and motions to go put in front of the
17 Court to adjudicate that claim.

18 Q And is it your testimony that has to be done
19 separately, claim by claim?

20 A No, I want it to be done in the estimation motion.

21 Q Are they the only two ways, claim by claim or
22 estimation?

23 A You could try to do it via omnibus, as well.

24 Q Can you explain that to us, as well, please.

25 A So an omnibus objection process is where we're going to

1 take claims by that we think have the same objection to a set
2 of claims and object on that basis to say all of these
3 claims, we object on this basis and put that in front of the
4 Court.

5 Q Have you done an analysis as to whether or not this
6 debtor can do, as you mentioned, a separate claims objection
7 for each claim or an omnibus process for the claims?

8 A My team is still working through the 87,000 claims that
9 have been put on file. It takes a long time; you've got to
10 look at each one. And so, no, we do not have a feel for how
11 long it would take or which buckets we would put each of
12 these 87,000 claims into to bucket them up into various
13 omnibus objections. We are moving forward with the
14 estimation motion.

15 Q Okay. I want to talk about, a little bit about the
16 estimation methodology, okay?

17 A Okay, other than -- I mean, obviously, I'm --
18 everything that's in my declaration makes sense, but if
19 you're asking about things that aren't under my purview, like
20 the valuation of each -- of each of the tokens, I can't speak
21 to that.

22 Q Okay. Have you been involved -- in your scope in this
23 case, have you begun any omnibus claim objection procedure?

24 A Yes.

25 Q And what steps have you taken?

1 A So my team has first and foremost tried to take the
2 filed claims and match them up with customer accounts. If we
3 can match up that claim with a customer account and, thus,
4 you know, something that's on the schedules and in our books
5 and records, then we can say, okay, this is what we thought
6 the claim should have been, here's the variants, let's now
7 try to put it into, you know, where are we different. And
8 then we have like a process to say, okay, what are the ways
9 that we can object to this in an omnibus manner. We only get
10 three shots at each claim with omnibus, so you've got to be
11 careful on how you do it. You can't just like come up with
12 an omnibus and file it, you've got to make sure that you can
13 get everything you need done with that particular claim, done
14 with three shots at it.

15 With regard to everything else that we don't have a way
16 of matching it up to a customer account, that has to be, you
17 know, manually done where we're pulling it up and looking at
18 the claim, trying to match it up with a customer, seeing
19 where it came from, going through a discovery process, et
20 cetera. That's going to take time for those 87,000.

21 Q When did you start that process for this debtor -- for
22 these debtors?

23 A Before the end of the bar date. I mean, I don't
24 remember exactly when our bar date was, but over the summer
25 is kind of when we started.

1 Q And when did you abandon that course of action?

2 A It's not abandoned, we --

3 Q Oh.

4 A -- continue to reconcile all the claims.

5 Q Okay. So you'll be filing omnibus claims objections?

6 A We will be filing omnibus claims objections.

7 Q Okay. Was -- when a claim objection -- when a proof of
8 claim is filed with the Bankruptcy Court, it is deemed
9 allowed, correct?

10 A I'm -- I don't know.

11 Q If you don't know, that's okay.

12 A I don't know.

13 Q Okay. If a debtor files or if anybody else files an
14 objection to a proof of claim that's filed, there would be a
15 response, correct?

16 A If the debtor files an objection, they don't have to
17 respond, but, yes, they can respond.

18 Q But they can respond, right? A creditor would have the
19 right to respond?

20 A Correct.

21 Q And how about discovery? Did you mention that earlier
22 in your testimony that there would be discovery after a
23 claimant filed a response to a claim objection?

24 A Yes, we can do discovery afterwards.

25 Q And then you said there would be an evidentiary hearing

1 too, didn't you?

2 A You can have an evidentiary hearing, yes.

3 Q Are the claimants given that opportunity here if the
4 estimation motion is granted?

5 A Not -- well, I mean, first of all --

6 MR. BIELLI: Thank you, Your Honor. I don't have
7 any other questions.

8 THE COURT: He didn't answer the question.

9 You can answer, Mr. Moseley.

10 THE WITNESS: So not for -- not for the pieces
11 that we are saying are in the estimation motion, so the value
12 of each token. We're going to have evidentiary hearings on,
13 you know, how many tokens that they have, if we have a
14 disagreement on that. The estimation motion is for the
15 valuation of the particular token.

16 MR. BIELLI: I don't have any other questions at
17 this time, Your Honor. If there's going to be, I guess, I
18 don't know if it would be redirect, perhaps I'd like the
19 opportunity to recross, but I don't think so.

20 THE COURT: I don't allow recross.

21 MR. BIELLI: Thank you, Judge.

22 THE COURT: Anyone else wish to cross?

23 MR. GWYNNE: Good morning, Your Honor, Kurt Gwynne
24 from Reed Smith on behalf of the Foundation Serendipity and
25 Foundation Elements creditors.

1 CROSS-EXAMINATION

2 BY MR. GWYNNE:

3 Q Good morning, Mr. Moseley.

4 A Good morning.

5 Q In paragraph 2 of your declaration, you describe some
6 industries in which you have experience; do you recall that?

7 A It would be better if I had the declaration in front of
8 me.

9 Q You don't have a copy of it with you?

10 A No.

11 MR. GLUECKSTEIN: Your Honor, may I provide the
12 witness a copy?

13 THE COURT: Yes.

14 MR. GLUECKSTEIN: Does Your Honor need a copy?

15 THE COURT: No. Thank you.

16 THE WITNESS: Thanks. I'm there, sir.

17 BY MR. GWYNNE:

18 Q Do you see in paragraph 2 where it lists a number of
19 different industries in which you tout your 20 years of
20 restructuring and distressed investment experience?

21 A Yes, sir.

22 Q Is the cryptocurrency industry one of those industries
23 in which you have restructuring -- you list that you have
24 restructuring and distressed debt experience?

25 A Not before this case.

1 Q Okay. Can you please take a look at paragraph 3 of
2 your declaration?

3 A I'm there.

4 Q Do you see where you talk in paragraph 3 about the
5 Chapter 11 restructurings in which you have been involved?

6 A This is some of the list, but, yes, I see it.

7 Q Are any of those cryptocurrency cases?

8 A As I stated before, I have not been involved in a
9 crypto case before this one.

10 Q Now, you believe that scheduled or filed proofs of
11 claim that were asserted in crypto quantities need to be
12 estimated so they can be converted to U.S. dollars, correct?

13 A Correct. I think that's what the -- you know, the
14 general -- I don't think that's what my declaration says
15 exactly, to be honest.

16 Q Okay.

17 A My declaration says I think we need to dollarize the
18 claims.

19 Q All right. Well, do you need to dollarize scheduled
20 claims?

21 A Correct.

22 Q And do you need to dollarize proofs of claim?

23 A We want to dollarize all of the filed claims, yes.

24 Q Now, the debtors have, you say, over two million in
25 scheduled claims, right?

1 A Correct.

2 Q Who scheduled the debtors' claims?

3 A The debtors. So, myself, my team, in concert with the
4 management team, as well as, you know, other professionals in
5 the case.

6 Q And the debtors and you and your team scheduled the
7 customers' claims in crypto quantities, right?

8 A Correct.

9 Q You didn't schedule the claims in U.S. dollars, right?

10 A No, we scheduled them in quantities with the estimation
11 motion process in mind.

12 Q Okay. And that was the debtors' choice whether to file
13 the scheduled claims in quantities or U.S. dollar values,
14 right?

15 A Yes, it was our choice.

16 Q Did you ever suggest to the debtor that it simply
17 schedule the claims in U.S. dollars amounts?

18 A The price of the tokens, we didn't feel like we had a
19 reliable source in the AWS system. Obviously, the exchange
20 had a price for every item on the exchange, but, you know, as
21 with everything else with the IT at FTX, we didn't trust it,
22 you know, we were using -- we were looking at other sources.
23 And so we didn't feel comfortable taking a stance at that
24 time on exactly what the value of each token would be as of
25 the petition time.

1 Q So you didn't suggest that the debtor value the claims
2 in its schedules in U.S. dollar amounts; is that correct?

3 A I'm not a valuation expert and when I didn't feel like
4 we had a good, you know, reliable source for the price of
5 each token because they're all complicated and different, we
6 didn't feel like we could put that on the schedules.

7 Q Okay. Let's talk about the filed proofs of claim. You
8 say the debtor has approximately 87,000 filed proofs of
9 claim, right?

10 A Yes, sir.

11 Q And isn't it true that the debtor asked the customers
12 to file those proofs of claim in crypto quantities, not U.S.
13 dollar amounts?

14 A There are -- we asked them to respond to our crypto
15 quantity amounts. There's a portion of the proof of claim
16 form where they could fill in whatever they want, and they
17 did.

18 Q And you're entitled to explain your answer, but can you
19 answer yes or no to whether or not the debtor requested all
20 of its customers to file the proofs of claim in quantities,
21 crypto quantities, not U.S. dollar amounts?

22 A We did ask them to do that, yes, but as I said before,
23 the proof of claim form is the debtors interacting with the
24 customers and on that sheet we asked them to fill in anything
25 else that they -- that isn't in our table, and that's where

1 they have their opportunity and if they -- some of them put
2 in dollars into that.

3 Q So the debtor, who decided to file its schedules in
4 crypto quantities and to ask creditors to file their proofs
5 of claim in crypto quantities, is now complaining that it has
6 too many claims in crypto quantities and therefore needs to
7 estimate them, correct?

8 A The debtor is asking to estimate all of the claims,
9 scheduled and filed. Does that answer your question?

10 Q Well, you agree then, I was correct in what I said,
11 right?

12 A Please ask it again.

13 THE COURT: He's asking you to explain your
14 question, he didn't understand it.

15 BY MR. GWYNNE:

16 Q Did you understand my question?

17 A Please ask it again.

18 Q The debtor -- the debtors, who chose to schedule claims
19 in cryptocurrency quantities, not dollars, and who asked its
20 creditors to file proofs of claim in crypto quantities, not
21 U.S. dollars, is now saying, Your Honor, we have too many
22 crypto quantity claims, we can't possibly litigate all of
23 them to a dollar value, right?

24 A I disagree with how you said that. We asked for
25 cryptocurrency amounts for each token and we want that. We

1 need to know how much of each token they think they had as of
2 the petition date, and that's a valid data point, we need
3 that to do our process.

4 In addition, though, to dollarize the claims, I have to
5 turn those cryptocurrency token amounts, quantity amounts,
6 into a dollar amount via a market price as of the petition
7 time, and that's what we're doing here with the estimation
8 motion.

9 Q And a creditor also can dollarize its claim, as you
10 indicated, by completing that portion of the proof of claim,
11 right?

12 A Some of the creditors put in different tokens -- or the
13 same tokens and a price, and, you know, the math that spit
14 out. Some of it was with errors, but, you know, some of the
15 people put in what they thought the price should be in there.

16 Q Are you aware that the Foundation Serendipity and
17 Foundation Elements' proofs of claim total approximately \$300
18 million?

19 A I don't -- I didn't memorize all the proofs of claim,
20 sorry. No, I don't know that.

21 Q Do you know -- did you hear debtors' counsel tell the
22 Court, I believe he used the phrase a small subset of digital
23 currencies aren't being valued today?

24 A I heard him say that, yes.

25 Q And did you hear him include the OXY -- do you remember

1 the tokens he said that were not being valued today, one was
2 OXY --

3 A I'm fairly certain it was MAPS, OXY, BOBA, and I think
4 Serum, but I don't remember the last one.

5 Q And do you know what percentage of the outstanding
6 unsecured claims are represented by the OXY and MAPS
7 creditors?

8 A I'm sure I could -- I'm sure I have that in files
9 somewhere, but I do not have it committed to memory. As I
10 said, there's two million claims, 87,000 filed claims, I
11 don't have them committed to memory. I'm sorry.

12 Q Did you hear debtors' counsel tell the Court that the
13 debtors have \$26 quintillion in claims filed against them?

14 A I think that number is a little off, but 20 -- over 20
15 quintillion, yes.

16 Q And is it fair to say that the claims of creditors that
17 hold OXY and MAPS tokens are a very small portion of that 20-
18 plus quintillion dollars in claims?

19 A Tell me what your threshold for small is. I mean, it's
20 very objective what you're asking and I've told you a couple
21 times that I don't remember. I didn't commit them to memory,
22 I don't know what the -- to do that math, I'd have to know
23 what their amount is and divide it by 20 quintillion, which
24 is a big number.

25 Q Okay. Well, I'll give you a -- you asked me for a

1 threshold of what I would call a small amount. Is it less
2 than one percent?

3 A It is going to be less than one percent, yes.

4 Q Is it less than a half of a percent?

5 A I don't have that math. I'm sorry.

6 Q It's common for debtors to put a range of potential
7 recoveries in a disclosure statement, right?

8 A It is common, yes.

9 Q And it's also common for debtors to object to claims
10 post-confirmation, right?

11 A Correct. The claims resolution process continues --
12 continues on normally at post-effective date.

13 Q And it's also common for a debtor to establish a
14 disputed claims reserve at confirmation to actually litigate
15 claims post-confirmation, right?

16 A It's common to do that, but I will tell you that it is
17 difficult to do that when the number of -- the number and
18 amount of the claims in question is as large as we're talking
19 about.

20 Q Well, you concede here that the debtor will have a
21 reserve to deal with disputed claims, right?

22 A I believe the debtor will have some sort of reserve for
23 disputed claims. We're going to do our best to try to get
24 through as many of them, but there will probably be some that
25 follow post-emergence.

1 Q Okay. And is it fair to say that you believe that it's
2 important to dollarize the cryptocurrency claims so that it
3 will most accurately reflect claims amounts and estimated
4 recoveries in the disclosure statement?

5 A Can you please ask that question again?

6 Q Do you believe it's important to dollarize the value of
7 the digital asset claims so that the disclosure statement
8 accurately reflects claims amounts and estimated recoveries?

9 A In my opinion, it's essential. I can't do the recovery
10 amounts without having some sort of value for the claims, you
11 know, the math, I need that denominator.

12 Q And you also believe it's important to permit creditors
13 to make an informed decision when voting on the plan, right?

14 A Indeed.

15 Q And if there was a claim or right, for example, that
16 somebody was asserting that could take all the assets away,
17 all the digital assets away, you would want to have that
18 resolved before the disclosure statement hearing, right?

19 A That's a hypothetical, there's a bunch of facts and
20 circumstances associated with it. I mean, there's always
21 going to be claims that are big and, you know, you need to
22 know the facts and circumstances of that case to say whether
23 or not it has to be taken care of before you can feel
24 comfortable with your range.

25 Q So you're saying it's possible that you could have a

1 claim to the debtors' assets that could take them all out of
2 the estate where creditors would get nothing under a plan,
3 but there are some circumstances where you wouldn't have to
4 address that in the disclosure statement, you wouldn't have
5 to have that claim resolved before the disclosure statement
6 is sent out?

7 A Once again, that's a hypothetical, but I'm sure that I
8 could get comfortable with certain claims. You know, if
9 there was no merit to them, if I knew they were duplicative,
10 right, I could get comfortable with that, but I'd need to
11 know the facts and circumstances of the hypothetical before I
12 could tell you with certainty whether or not we're
13 comfortable saying that it has to be done pre-emergence or
14 not.

15 Q Have you ever read the service guidelines for the
16 debtors' -- FTX's crypto exchange?

17 A The service guidelines?

18 Q Yeah, the rules of -- that are on the website for
19 customers?

20 A The terms of service?

21 Q Yes.

22 A I've read most of it in the context of other parts of
23 what we're doing, but clearly that's not in my declaration.

24 MR. GLUECKSTEIN: Your Honor, I'm going to object
25 to this. We're now going way beyond the scope of the direct

1 and we are now into the terms of service, which they are not
2 at issue for today's hearing.

3 MR. GWYNNE: Your Honor, the witness testified in
4 his declaration about undue delay. He also testified about
5 needing certain information to have in the disclosure
6 statement for people to make an informed choice. And one of
7 the things I'm going to ask him about those terms of service
8 is the fact that they say the customers own the assets and
9 that there's a customer claim to those assets, and whether he
10 thinks that's something that should be in the disclosure
11 statement. So I think it's well within the scope of his
12 testimony.

13 THE COURT: Limit it to that particular issue.
14 You can answer the question.

15 MR. GWYNNE: I'll just re-ask it just in case --

16 THE WITNESS: Okay.

17 BY MR. GWYNNE:

18 Q You say you've read the terms of service for customers
19 of FTX's crypto exchange, right?

20 A I've read part of them, yes.

21 Q Did you read the part of it that says the customers
22 actually own the assets in their accounts?

23 A I've read parts of it in which folks have, you know,
24 pointed to as this is the reason why, you know, they think
25 they have ownership of it or not, but I'm not a lawyer. I

1 don't make a determination on whether or not I think that's
2 valid or what it says or -- you know, I've read it from a
3 businessperson's perspective.

4 Q And so you're aware that customers are relying on that
5 language to assert that they own the digital assets in their
6 accounts, right?

7 A I haven't talked with any customers, so I don't know
8 what they're relying on.

9 Q Do you think that's an important thing to know as the
10 debtors' financial adviser who's testifying regarding the
11 debtors' disclosure statement?

12 A I know what the Code says and the process around the
13 claims adjudication, you know, not often do I read a terms of
14 service with customers and make a determination without
15 counsel on whether or not, you know, they have a claim.

16 Q Well, and not often have you been involved in a
17 cryptocurrency case either, right?

18 A I've never been involved in a cryptocurrency case
19 before this.

20 MR. GWYNNE: I have nothing further, Your Honor.
21 Thank you.

22 THE COURT: Thank you.

23 Any other cross?

24 (No verbal response)

25 THE COURT: Redirect?

1 MR. GLUECKSTEIN: Thank you, Your Honor. Brian
2 Glueckstein for the debtors, just briefly.

3 REDIRECT EXAMINATION

4 BY MR. GLUECKSTEIN:

5 Q Mr. Moseley, could you just turn to your declaration?
6 Do you still have that in front of you?

7 A Yep.

8 Q I just want to make sure the record is clear.
9 Paragraph 6 of your declaration, you state in there that the
10 debtors have over two million scheduled claims and 87,000
11 filed claims that include at least a single digit of assets.
12 Do you see that?

13 A Yes, sir.

14 Q You go on to say that the claims are scheduled and
15 filed almost exclusively in quantities. Do you see that?

16 A Yes, sir.

17 Q So, Mr. Moseley, in order to have the information that
18 you need and that customers need to understand the value of
19 their claim, what needs to happen?

20 A I need to be able to multiply the number of tokens for
21 each of these tokens by a price in dollars and, to do that, I
22 need a price, I need a price for each token in dollars.

23 Q Okay. And with respect to the SPA tokens, with respect
24 to tokens in particular cryptocurrencies, do the debtors have
25 a price that you could have provided in the schedules that

1 you believed was reliable or accurate?

2 A Say that again?

3 Q Did the debtors at the petition date a price with
4 respect to SPA tokens that you could have put into the
5 schedules and dollarize the claims yourselves?

6 A We didn't feel comfortable using the price that was on
7 the exchange server as the price for that token. You know,
8 we felt that we needed to say what is the market price to
9 sell this token somewhere else, what would that price be, and
10 for that -- we didn't have that handy at the time.

11 Q There were some questions, Mr. Moseley, about the
12 process in a claims objection process, as opposed to
13 estimation; do you recall that?

14 A Yep.

15 Q There was questions about whether there would be
16 discovery and an evidentiary hearing; do you recall that?

17 A Yes.

18 Q In your experience, do individual claims objections,
19 that discovery and evidentiary process take time?

20 A They do.

21 Q Do you have a sense -- do those get resolved,
22 generally, in a week?

23 A Based on my experience, it's, you know, two to three
24 months, right, to go through the full process of doing --
25 having the objection on file, giving the claimant time to

1 respond, having some negotiation, doing discovery, picking
2 experts, putting those reports on, you know, doing
3 depositions, et cetera, and then going back to court.

4 Q Have you seen claims objections take longer periods of
5 time, in your experience?

6 A For sure.

7 Q There was a question about whether there would be an
8 evidentiary hearing with respect to the estimation motion; do
9 you recall that?

10 A I do.

11 Q Is it your understanding that we're having an
12 evidentiary hearing today?

13 A I thought my testimony was evidence. So, yes, I
14 thought we were doing it, but maybe I've got the terminology
15 wrong.

16 MR. GLUECKSTEIN: Thank you, Your Honor. No
17 further questions.

18 THE COURT: Thank you. Thank you, Mr. Moseley.
19 You may step down.

20 All right, we're at 12:02. It doesn't make sense
21 to call another witness for just a few minutes. So why don't
22 we take our break a little bit earlier and we'll come back at
23 1 o'clock, and we'll reconvene and we'll go from there.

24 Let me just get an understanding, we have two more
25 -- are you calling both of your experts for supplemental --

1 MR. GLUECKSTEIN: I am, Your Honor, but very
2 briefly, only five to ten minutes for each.

3 THE COURT: All right. And do the parties who
4 have cross, do you intend to cross-examine the expert
5 witnesses as well? Mr. Gwynne, Mr. Bielli?

6 MR. GWYNNE: I'm sorry, Your Honor?

7 THE COURT: Do you both intend to cross-examine
8 both of the expert witnesses that the debtors are calling?

9 MR. GWYNNE: Kurt Gwynne, for the record, Your
10 Honor. I do not intend to cross-examine those witnesses
11 because we agreed that the valuation of our clients' claims,
12 if it's going to be estimated, will be -- is not being
13 handled today. We're part of the small subset of claims that
14 aren't being valued today.

15 The reason I cross-examined the first witness is
16 because the issue that we are litigating today is whether or
17 not estimation of our clients' claims is appropriate or
18 whether we should have a regular claims allowance proceeding.
19 So that's why we crossed that witness and will not be
20 crossing the other two.

21 THE COURT: All right.

22 MR. GWYNNE: Thank you, Your Honor.

23 MR. O'DONNELL: Your Honor, Dennis O'Donnell, DLA
24 Piper, on behalf of MAPS Vault. We're similarly aligned. We
25 have reached an agreement with the debtors that those

1 witnesses, to the extent they affect that future valuation
2 hearing, we'll come in today for what's on the calendar
3 today, not what's going to happen in March. So we will not
4 be cross-examining.

5 THE COURT: All right. Thank you.

6 MR. MINUTI: Good afternoon, Your Honor, Mark
7 Minuti from Saul Ewing. Your Honor, I represent TMSI. The
8 token that my clients are concerned with is Serum and,
9 consistent with Mr. Gwynne's statements, those issues are not
10 going to be decided today. So we're going to reserve our
11 rights on cross when we have the further evidentiary hearing
12 with respect to that token.

13 THE COURT: All right. Thank you.

14 MR. MINUTI: Thank you.

15 MR. KLAUDER: Good afternoon, Your Honor, David
16 Klauder with Mr. Bielli on behalf of Aurus. I think we'll
17 have cross with respect to one of the experts, I believe it's
18 Dr. Howell.

19 THE COURT: Okay.

20 MR. KLAUDER: So we'll work over the lunch break
21 to try to make that focused.

22 THE COURT: All right. Great, thank you.

23 MR. KLAUDER: Thank you.

24 THE COURT: All right, then we are recessed until
25 1:00 p.m. Thank you -- oh, one more? Sorry.

1 MR. WEISS: Sorry, Your Honor, John Weiss on
2 behalf of BOBA Foundation, essentially just to reserve rights
3 as well. We were put over to the hearing that will be held
4 in March, I believe, with respect to the estimation issues.

5 THE COURT: All right. Thank you.

6 MR. WEISS: Thank you, Your Honor.

7 THE COURT: Anyone else?

8 (No verbal response)

9 THE COURT: All right, thank you. We're in recess
10 until 1:00. I'll see everybody then.

11 (Recess taken at 12:05 p.m.)

12 (Proceedings resumed at 1:02 p.m.)

13 THE COURT: Let's go.

14 MR. GLUCKSTEIN: Okay. Thank you. Again, Brian
15 Gluckstein for the debtors. The next witness that the
16 debtors are calling is Kevin Lu, who's the director of data
17 science and product at Coin Metrics, Inc. Mr. Lu submitted a
18 declaration containing his price analysis at Docket Number
19 5204.

20 Before requesting his declaration be admitted into
21 evidence, we would like to call Mr. Lu briefly to the stand
22 to provide some foundation for the Court.

23 THE COURT: All right. Thank you. Mr. Lu, please
24 come forward. Take the stand and remain standing for the
25 oath.

1 THE CLERK: Please raise your right hand. Please
2 state your full name and spell your last name for the record.

3 THE WITNESS: Kevin Lu. Last name is L-U.

4 THE CLERK: Do you affirm you will tell the truth,
5 the whole truth, and nothing but the truth to the best of
6 your knowledge and ability?

7 THE WITNESS: Yes, I do.

8 THE CLERK: You may be seated.

9 THE WITNESS: Thank you.

10 MR. GLUCKSTEIN: Your Honor, may I first the
11 witness with a copy of his declaration?

12 THE COURT: Sure.

13 MR. GLUCKSTEIN: Does Your Honor need one?

14 THE COURT: I have it. Thank you.

15 THE WITNESS: Thank you.

16 DIRECT EXAMINATION

17 BY MR. GLUCKSTEIN:

18 Q. Good afternoon, Mr. Lu.

19 A. Good afternoon.

20 Q. Mr. Lu, can you please describe for the Court
21 where you're currently employed?

22 A. I'm currently employed at Coin Metrics.

23 Q. And what is your role at Coin Metrics?

24 A. I'm a director of data science and product.

25 Q. What formal education degrees do you hold?

1 A. I studied at the University of California, where I
2 received -- Berkeley -- where I received a bachelor's in
3 business administration and a bachelor's in economics with
4 distinction.

5 Q. Did you have professional experience in data
6 sciences prior to joining Coin Metrics?

7 A. Yes. My professional experience consists of about
8 15 years at various companies, all of which involved
9 applications of data science to financial data, including
10 data sets that relate to prices for financial assets.

11 Q. Mr. Lu, when did you join Coin Metrics?

12 A. I joined five years ago.

13 Q. Could you briefly explain for the Court what Coin
14 Metrics is and what it does?

15 A. Sure. Coin Metrics is a data provider of
16 cryptocurrency-related data. We have several product
17 offerings that range from market data, network or blockchain-
18 related data, indexes, and risk products. And our clients
19 are financial institutions and companies engaged in the
20 digital assets space.

21 Q. Mr. Lu, what do you do in your role at Coin
22 Metrics as director of data science?

23 A. I have a range of responsibilities. I oversee
24 many product lines, but one of the product lines I oversee is
25 the Coin Metrics prices. This is one of our commercial data

1 offerings, and it represents prices that we calculate for a
2 wide range of cryptocurrency and digital assets at various
3 frequencies using various methodologies, and they're used by
4 our clients for a wide range of purposes.

5 Q. What role did you personally have in the
6 development of the Coin Metrics prices?

7 A. As I said, I joined five years ago when the
8 company was founded. This was when the company was pre-
9 revenue and didn't have any commercial product offerings. I
10 played a key role in developing the Coin Metrics prices and
11 bringing it from inception to a successful commercial
12 offering today. I was the principal author and designer of
13 its methodology, and on a day-to-day basis, I oversee its
14 performance and evaluate its performance during times of
15 market stress, volatile price movements, and other
16 situations.

17 Q. Mr. Lu, what were you asked to do when you were
18 retained by the debtors in these Chapter 11 cases?

19 A. The scope of my assignment was to calculate prices
20 for certain digital assets that were listed on the FTX
21 exchanges, as well as to calculate a confidence interval
22 reflecting the uncertainty of my determination of the price.
23 I was also tasked with writing a declaration that would
24 contain my qualifications and the methodology that I used.

25 Q. And did you, in fact, prepare a declaration

1 detailing your pricing and methodology?

2 A. Yes, I did.

3 Q. And can you summarize at a high level, just very
4 high level, what you did to provide the pricing set that's
5 set forth in that declaration?

6 A. I leveraged the data and methodology that are used
7 in the Coin Metrics prices and applied that to calculate the
8 prices of the assets within the scope of my work. At a very
9 high level, my methodology consists of two components. One
10 is to select a set of high quality constituent markets as
11 input in the calculation of the price of an asset.

12 And the second component is the application of
13 statistical methods to actually calculate the price and the
14 confidence interval. I applied these steps to the 428 assets
15 within the scope of my work.

16 Q. Mr. Lu, do you have a copy of your declaration in
17 front of you?

18 A. Yes.

19 Q. Is this the declaration that you prepared for
20 submission to the Court in this case?

21 A. Yes, it is.

22 Q. Okay. And is that declaration an accurate
23 reflection of the Coin Metrics pricing that was provided to
24 the debtors here?

25 A. Yes, it is.

1 MR. GLUCKSTEIN: Your Honor, at this time, I'd like
2 to move Mr. Lu's declaration, Docket 5204, into evidence in
3 support of the motion.

4 THE COURT: Any objection? Submitted without
5 objection.

6 MR. GLUCKSTEIN: No further questions, Your Honor.
7 He's available for cross, obviously.

8 THE COURT: I believe I asked before we broke for
9 lunch if anyone was going to cross. I don't think anybody
10 was going to cross Mr. Lu is that correct? Thank you.

11 Mr. Lu, thank you. You may step down.

12 MR. GLUCKSTEIN: Okay. Then moving right along,
13 Your Honor, our third and final witness on behalf of the
14 debtors is Sabrina T. Howell, who's the Associate Professor
15 of Finance at the NYU Stern School of Business. Dr. Howell
16 submitted a declaration that attached an expert report at
17 Docket Number 5203, as well as a supplemental written
18 declaration filed at Docket 67284.

19 And similarly, before requesting her declarations
20 be admitted, we would like to call Dr. Howell to the stand to
21 provide some foundation to the Court.

22 THE COURT: Dr. Howell, please come forward, take
23 the stand, and remain standing for the oath.

24 THE CLERK: Please raise your right hand. Please
25 state your full name and spell your last name for the record.

1 THE WITNESS: Sabrina T. Howell, H-O-W-E-L-L.

2 THE CLERK: Do you affirm that you will tell the
3 truth, the whole truth, and nothing but the truth to the best
4 of your knowledge and ability?

5 THE WITNESS: I do.

6 THE CLERK: You may be seated.

7 THE WITNESS: Thank you.

8 DIRECT EXAMINATION

9 BY MR. GLUCKSTEIN:

10 Q. Good afternoon. Professor Howell, could you
11 please describe to the Court where you are currently
12 employed.

13 A. The NYU Stern School of Business.

14 Q. And what is the focus of your work at the NYU
15 Stern School?

16 A. My research and teaching focus on Fintech,
17 entrepreneurial finance, and innovation, among other topics.

18 Q. What formal educational degrees do you hold?

19 A. I have a BA in economics and East Asian studies
20 from Yale University, a master's in economics from Harvard
21 University, and a Ph.D. in the economics track of the
22 political economy and government program at Harvard
23 University.

24 Q. Do you have any professional experience in the
25 areas of economics and finance outside of your role as a

1 professor at the Stern School?

2 A. I worked for two years as an economic consultant
3 at Charles River Associates.

4 Q. Professor Howell, do you have experience in your
5 teaching and academic writings with valuation and digital
6 asset related issues?

7 A. I do. I designed and teach a course at Stern on
8 Fintech-focused entrepreneurial finance, where we value
9 blockchain-related digital assets. And in my research, I
10 wrote a paper about initial coin offerings, which to my
11 knowledge is the most highly cited paper on that topic, with
12 about 700 citations, and published in a top finance journal.

13 And in that research, there are several elements that
14 are directly relevant to my work on this case, including
15 evaluating the market capitalization of tokens, analyzing
16 price data, looking at token vesting and lockup schedules,
17 and studying how tokens are listed on exchanges.

18 Q. Dr. Howell, what were you asked to do when you
19 were retained by the debtors in these bankruptcy cases?

20 A. So I was asked to assist the debtors in
21 determining the value of customer claims. I understand that
22 the debtor is liquidating its holdings of all the digital
23 assets that it has. And as part of that, I was asked to
24 consider whether there may be any appropriate discounts that
25 should apply to the various classes of assets that are being

1 liquidated and to which there are customer claims.

2 Q. And could you just, at a high level, summarize for
3 the Court the types of -- the discounts that you considered
4 in your analysis in this case?

5 A. Sure. So I considered three types of discounts
6 within the scope of my assignment. The first reflects the
7 fact that the markets for some of the assets that the debtors
8 are holding are relatively illiquid, and the debtor is
9 holding a very large quantity relative to regular trading
10 volume.

11 So I estimate the price at which the debtor could
12 likely sell its holdings, and in some cases, there is a
13 shortfall due to price impact from selling these very large
14 holdings. I call that an asset liquidation discount, and I
15 applied an asset liquidation discount to 71 of the 1,321
16 unique digital assets to which customers have claims.

17 The second type of discount reflects the fact that some
18 claims are to assets with marketability restrictions. So for
19 these, I apply a discount for this lack of marketability.

20 And finally, I consider claims to equity and equity-
21 like instruments, and this includes FTT, and I assign zero
22 value to these claims.

23 Q. Dr. Howell, did you prepare a declaration and
24 report detailing your opinions and findings?

25 A. I did.

1 MR. GLUCKSTEIN: Your Honor, can I approach the
2 witness to give her a copy of her declarations?

3 THE COURT: Yes.

4 BY MR. GLUCKSTEIN:

5 Q. Do you have a copy of your declaration with the
6 annexed report in front of you, Dr. Howell?

7 A. I do.

8 Q. Is this the report that you prepared in connection
9 with submission to the Court in this case?

10 A. It is.

11 Q. Do you also have a copy of your supplemental
12 declaration?

13 A. I do.

14 Q. And you also prepared that declaration in support
15 of the motion in this case?

16 A. I did.

17 MR. GLUCKSTEIN: Your Honor, at this time, I'd like
18 to move Professor Howell's declaration with annexed report at
19 Docket 5203, as well as her supplemental declaration at 6728-
20 4 to evidence in support of the debtor's motion.

21 THE COURT: Any objection? Admitted with without
22 objection.

23 (Howell declaration received into evidence)

24 MR. GLUCKSTEIN: Thank you, Your Honor. No further
25 questions.

1 THE COURT: Thank you. Cross exam.

2 MR. BIELLI: Good afternoon, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. BIELLI:

5 Q. Good afternoon, Ms. Howell.

6 A. Good afternoon.

7 Q. Thomas Bielli on behalf of RS Tech Limited. Can
8 you hear me okay, Dr. Howell?

9 A. I can. Thank you.

10 Q. Thank you. Dr. Howell, who retained you to
11 prepare this report?

12 A. Sullivan & Cromwell, on behalf of the debtors.

13 Q. When did they do that?

14 A. I believe in late summer.

15 Q. Do you remember who you spoke to about the
16 retention?

17 A. The lawyers here, Brian and Julie.

18 Q. Did you ever speak to anybody at FTX?

19 A. Yes. I spoke to Mr. John Ray as part of the
20 retention, as well.

21 Q. Do you have an engagement letter or retention
22 letter that governs the scope of your engagement?

23 A. I do.

24 Q. And who is that from?

25 A. It is from Sullivan & Cromwell.

1 Q. Did you receive any instructions in late summer of
2 2023 as to what they were looking for this report?

3 A. Yes. I was asked to examine any -- I was asked to
4 consider the various types of assets to which customers have
5 claims and was told that the debtors would be liquidating all
6 of their holdings of digital assets in an orderly fashion,
7 starting on the petition date, and I was asked to assess
8 whether any -- there should be any discounts applied as a
9 result of that liquidation process.

10 Q. And who gave you those instructions?

11 A. The lawyers at Sullivan & Cromwell in concert with
12 the team that I've been working and that has been working
13 under my direction at Analysis Group.

14 Q. Okay. I'm going to back up for a second. Before
15 we get into the Analysis Group, and maybe my question wasn't
16 clear, but what I'm looking for is who gave you the
17 assignment. Was it one lawyer? Was it a group of lawyers?
18 Was it FTX? Was it a Zoom? Was it a phone call? How did
19 you get this assignment?

20 A. The assignment, I believe, was from Brian
21 Gluckstein and his team at Sullivan & Cromwell.

22 Q. Okay. Was that your initial interaction --

23 A. And I think that -- sorry.

24 Q. I'm sorry. Oh sorry, go ahead, Dr. Howell.

25 A. Just to be -- if I can just clarify.

1 Q. Sorry.

2 A. Sorry, just to clarify. My understanding is that
3 they are acting on behalf of and under instructions from John
4 Ray and the management at the FTX estate. But I'm not a
5 lawyer, and so I -- and I -- I don't -- I can't speak exactly
6 to the hierarchy on that side of things.

7 Q. Right. No, I'm not trying to trip you up. I'm
8 really asking, you know, who gave you instruction. And is it
9 your testimony that your assignment, the instructions for
10 your assignment, were given to you by debtor's counsel at
11 Sullivan & Cromwell; is that correct?

12 A. That's correct.

13 Q. Okay.

14 A. I think acting on behalf of the debtors.

15 Q. Okay. And you received that engagement in the
16 summer, later summer of 2023, correct?

17 A. Yes.

18 Q. Okay. When was your report completed?

19 A. In -- at the -- at -- in late December of 2023.

20 Q. Your report's dated December 27th, 2023. I assume
21 it was completed prior to that date or close to that date.

22 A. Yes.

23 Q. Okay. Was it completed before December 16th?

24 A. No, it was completed on the date it was filed.

25 Q. Okay. When you completed your report, did you

1 send it to anybody for review before it was filed?

2 A. I was the final reviewer.

3 Q. Okay. And your testimony is you reviewed it on
4 December 27th, 2023, two days after Christmas?

5 A. Correct.

6 Q. Okay. Are you full-time faculty at Stern?

7 A. I am.

8 Q. So do you -- how many classes do you teach?

9 A. My teaching load, as we say, is --

10 Q. Sorry.

11 A. -- three classes per year. I teach less than that
12 because I usually buy some out with grants.

13 Q. Okay. So how many classes did you teach in the
14 fall of 2023?

15 A. None.

16 Q. Okay. You mentioned a group. I think it was the
17 Assigned Group. I apologize. I don't have it in front of
18 me. Who's the name of your -- the group that you work with
19 in your preparation?

20 A. Analysis Group.

21 Q. Analysis Group. Who or what is the Analysis
22 Group?

23 A. Analysis Group is an economic consulting firm.

24 Q. What does that mean?

25 A. It means that they conduct various types of

1 analytic work to support, as I understand, a range of clients
2 in the private and public sectors.

3 Q. Are you a client of that group?

4 A. No.

5 Q. Okay. What was that group's involvement in this
6 expert report?

7 A. At my direction, they conducted analyses of data
8 and markets and conducted various calculations that I
9 requested.

10 Q. Were they paid for that?

11 A. I believe so, yes.

12 Q. By whom or who?

13 A. I believe by the debtor and the estate.

14 Q. So is it your understanding that they were -- this
15 group, the Analysis Group, was separately retained by the
16 debtor and not by you?

17 A. I believe there is a single engagement letter that
18 covers all of the work that I did and the Analysis Group team
19 did under my direction, but I can't say for sure whether
20 there may be any additional engagement letters.

21 Q. Do you have an approximation as to how many hours
22 you and the Analysis Group spent on this report from the late
23 summer of 2023 through December 27th, 2023, exclusive of your
24 preparation for today?

25 A. I don't have that off the top of my head.

1 Q. Were you paid a flat rate or an hourly rate for
2 your services?

3 A. An hourly rate.

4 Q. Okay. Do you know how many hours you billed to
5 this engagement?

6 A. I would have to go and look. I don't remember
7 each month.

8 Q. Okay. Have you submitted invoices for your
9 engagement to either Sullivan & Cromwell or FTX as of today?

10 A. I have. I submit in my invoices via Analysis
11 Group, which, as I understand, aggregates them and submits
12 them to Sullivan & Cromwell.

13 Q. And as you sit here today, you don't know the
14 amount of hours you've spent; is that correct?

15 A. I don't. I think ballpark, I can give a ballpark
16 number --

17 Q. Sure.

18 A. -- around the order of 80, but that's just an
19 estimate. I --

20 Q. And is that estimate your hours or --

21 A. My hours.

22 Q. Not the asset group's hours or Analysis --

23 A. Analysis Group.

24 Q. -- Group's hours?

25 A. Correct.

1 Q. Okay. Do you have any ballpark of what the
2 Analysis Group spent on this report?

3 A. I do not.

4 Q. You mentioned during your direct, and I think you
5 mentioned it in one of my questions, that you were tasked
6 with valuing the debtor's assets to be liquidated as of the
7 petition date. Does that generally sound what you testified
8 to?

9 A. I was asked to assess the likely prices at which
10 the debtor would be able to sell its holdings of digital
11 assets in an orderly liquidation, commencing at the petition
12 date, as well as to account for a lack of marketability, and
13 finally to assess the fundamental value of FTT and equity
14 claims in FTX.

15 Q. Okay. On the assets that could be liquidated, how
16 long would that take? In other words, you were doing it as
17 of the petition date with the debtor's intention to liquidate
18 it. How long would that take, the liquidation?

19 A. It was not part of my assignment to estimate the
20 time to liquidation.

21 Q. Do you know what it would be?

22 A. No. It would depend on how the liquidation
23 occurred.

24 Q. Did you review the debtor's plan that was filed on
25 December 16th, 2023?

1 A. No.

2 Q. Okay. Do you know that the debtor filed a plan on
3 December 16th, 2023?

4 A. I do, but I did not read it.

5 Q. Understood. You testified during your direct that
6 -- strike that.

7 If I say the debtor's books and records, do you know
8 what I mean?

9 A. I think so.

10 Q. Okay. Did you review the debtor's books and
11 records when you prepared this report?

12 A. I did not.

13 Q. Okay. Why not?

14 A. Because that was not within the scope of my
15 assignment.

16 Q. Okay. It's your testimony that you did not value
17 the debtor's -- or these assets that were held by the debtor
18 as of the petition date, but rather a liquidation commencing
19 as of the petition date, correct?

20 A. That's right. I have the --

21 Q. Thank you.

22 A. -- just to be clear. I observe the holdings of
23 each digital assets -- sorry -- of each digital asset, and
24 then, I observe petition time prices and market data, and I
25 use that information to calculate the likely prices at which

1 the debtor could have sold its digital assets in an orderly
2 liquidation.

3 Q. And that's where you apply the asset liquidation
4 discount, correct?

5 A. Correct.

6 Q. Okay. Did you come up with the asset liquidation
7 discount or was that provided to you by either debtor's
8 counsel or the debtors?

9 A. I came up with it.

10 Q. Okay. Who authorized you to file the declaration
11 and the expert report?

12 A. I think this is a legal question. No? I think I
13 authorized counsel to file on my behalf.

14 Q. On behalf of who? Your behalf?

15 A. On my behalf.

16 Q. Okay.

17 MR. BIELLI: I don't have any further questions,
18 Your Honor. Thank you very much. Thank you, Dr. Howell.

19 THE COURT: Thank you. Any other cross? I think
20 that was the only one that was mentioned before the break.
21 Redirect?

22 MR. GLUCKSTEIN: No redirect, Your Honor.

23 THE COURT: All right. Thank you, Dr. Howell. You
24 step down.

25 MR. GLUCKSTEIN: Your Honor, that concludes the

1 debtor's presentation of evidence on the motion.

2 THE COURT: Does anyone else have any evidence they
3 intend to introduce at the hearing? And we heard nothing.
4 We can go into closing arguments.

5 MR. GLUCKSTEIN: Thank you, Your Honor. Your
6 Honor, as detailed this morning by Mr. Diederich and
7 otherwise before the Court, debtors have worked tirelessly
8 since the petition date to secure, preserve, and maximize the
9 value of their assets for the benefit of customers and other
10 creditors. These assets --

11 THE COURT: Oh, I'm sorry. Hold on one second.

12 MR. GLUCKSTEIN: Yes.

13 THE COURT: I forgot about our YouTube folks. We
14 need to let them back in so they can hear the closing
15 argument.

16 MR. GLUCKSTEIN: Absolutely.

17 THE COURT: So let's take a five minute recess, and
18 we'll come back and let them -- we'-- recess until 11:35.

19 (Off the record at 1:28 p.m.)

20 (On the record at 1:34 p.m.)

21 THE BAILIFF: All rise.

22 THE COURT: Be seated. Sorry for cutting you off
23 there, Mr. Gluckstein. Why don't we rewind and start over
24 again?

25 MR. GLUCKSTEIN: Absolutely. I had forgotten as

1 well, but it's all fine, Your Honor, of course. Brian
2 Gluckstein for the debtors, Your Honor.

3 As Your Honor is aware, and as the Court heard, and
4 the parties heard as recently as this morning from Mr.
5 Diederich, the debtors have worked tirelessly since the
6 petition date to secure, preserve, and maximize the value of
7 their assets for the benefit of their customers and other
8 creditors.

9 These efforts, led by Mr. Ray, have been extremely
10 successful to date. As the Court is aware, the size of these
11 Chapter 11 cases are massive, with more than 2 million
12 scheduled and filed claims by customers and other creditors
13 located around the world.

14 This scope of these Chapter 11 cases also dwarfs
15 other cryptocurrency exchange bankruptcies for, among other
16 reasons, as reflected in the digital assets conversion table
17 attached to the proposed order today, there are 1,321
18 different digital assets that are the subject of customer
19 claims.

20 The debtors are in position to commence the plan
21 confirmation process with the path to emergence from Chapter
22 11, and most importantly, returning value to creditors within
23 sight. We continue to build consensus around our plan.

24 As set forth in Mr. Moseley's declaration and his
25 testimony today, the debtors need to be able to provide

1 adequate information in our disclosure statement, permit
2 creditors meaningful information to vote on the plan, permit
3 the debtors to project claims recovery information, set
4 reserves, and ultimately make distributions -- that's why
5 we're here -- to customers and their other creditors.

6 To accomplish these critical tasks, the debtors
7 need to value every claim that's based on a digital asset.
8 This case is unusual in that every one of those millions of
9 claims based on digital assets is currently unliquidated.

10 While the majority of the value of claims are
11 denominated in fiat or stablecoin, there are approximately 79
12 percent, as set forth in Mr. Moseley's declaration, of all
13 creditor claims that include at least a component, in part,
14 claims based on digital assets that are not readily converted
15 to us dollar values.

16 As has been clear from the first day of these
17 cases, due to the fraud committed by Mr. Bankman-Fried and
18 other insiders, the debtors did not have sufficient digital
19 assets on the petition date to consider a structure of
20 returning digital assets to all customers in kind.

21 Armed with the orders entered by this Court, the
22 debtors have been, as Mr. Diederich discussed this morning,
23 strategically monetizing its remaining digital assets, where
24 appropriate, to maximize the cash assets that ultimately will
25 be available for distribution to creditors.

1 The plan that's on file is premised on providing
2 U.S. dollar recoveries to creditors, and it is therefore
3 necessary for these claims to all be dollarized and to permit
4 them to be addressed alongside the existing fiat and
5 stablecoin claims that the debtors have.

6 To do that, prices for the claims based on digital
7 assets need to be established, and the debtors seek to do so
8 by estimating those claims pursuant to Section 502(c) of the
9 Bankruptcy Code in accordance with the proposed valuation
10 table that's attached to the revised order.

11 As detailed in our papers and the evidence that is
12 now before the Court today, the debtors believe the pricing
13 and methods for setting those prices before the Court is both
14 appropriate and fair to creditors.

15 We noticed this motion to millions of stakeholders,
16 and while we certainly have received objections, the
17 overwhelming majority of those creditors have not objected to
18 either the process or the pricing that's set forth in that
19 table.

20 And Your Honor, the disparate and often conflicting
21 positions that have been taken by certain of the objectors,
22 who plainly are looking for ways to increase their claim
23 recoveries at the expense of others from a finite set of
24 assets, necessitates a comprehensive solution that both
25 complies with the requirements of the Bankruptcy Code and

1 treats creditors and their finite pool of distributable
2 assets most fairly.

3 As Mr. Moseley's testimony establishes, any need to
4 liquidate the value of each claim based on digital assets on
5 an individual basis would unduly delay these cases and
6 distribution to creditors.

7 This is due to the fact that the claims based on
8 digital assets, as we've heard, are scheduled and filed in
9 quantities of digital assets in accordance with the procedure
10 set out in the bar date, notice, and order that was approved
11 by this Court.

12 This issue has been identified since the early
13 stages of the case and certainly noticed out to all creditors
14 as early as the bar date notices that went out last year. We
15 submit there cannot be a serious argument that these claims
16 that are held in denominated digital assets are, in fact,
17 liquidated.

18 In considering the question, courts look at the
19 question of whether a claim is capable of ready determination
20 or not, and that has been done in the context of estimation
21 proceedings under 502(c), as well as many other analogous
22 contexts.

23 There's a suggestion today to Mr. Moseley that the
24 debtor could have simply priced these assets and scheduled
25 the claims in dollars. And we heard from Mr. Moseley that

1 the debtor's conclusion was that with respect to the spot
2 assets on the tokens and coins, they did not have reliable
3 information to do that in the books and records of the
4 company.

5 And so, Your Honor, for the debtors to have done
6 such an exercise would have been the debtors unilaterally
7 choosing some form of a market price to determine the value
8 of these digital asset claims.

9 And while there have been some complaints around
10 this estimation process that have been lodged, we submit what
11 the debtors have done here has provided more due process and
12 more transparency than has happened certainly in even some of
13 the other large bankruptcy, crypto bankruptcy cases.

14 We filed the motion. We noticed it to all
15 creditors, millions of people. Everyone has had an
16 opportunity to come forward. Everyone had the opportunity to
17 interpose an objection.

18 Everyone had an opportunity to say, I need time, in
19 advance of today, to contest the valuation with respect to
20 any aspect of the experts of Mr. Lu's testimony or Dr.
21 Howell's testimony that were presented to Your Honor today.

22 A handful of those objectors did so. We've been
23 working constructively with those objectors, as I outlined
24 this morning at the outset of the hearing, to set a
25 subsequent hearing date on the valuation of that small subset

1 of tokens that Your Honor will consider subsequent to today,
2 currently on March 20.

3 But it is clear from the evidence that is now
4 before the Court and how that evidence was put together, and
5 analyzed, and calculated that how pricing to establish a
6 valuation for these novel digital assets trading on markets
7 that are at different prices, different times around the
8 world is far from readily determinable or easy.

9 We submit the evidence before the Court details a
10 comprehensive and deliberative process that was undertaken to
11 arrive at the estimated asset value set forth on the digital
12 assets conversion table. Mr. Lu explains how he and Coin
13 Metrics set baseline petition time pricing for the digital
14 assets that they priced.

15 Professor Howell explained how each and every
16 digital asset, all 1,300 plus, was analyzed to determine if a
17 further adjustment to the valuation was necessary due to the
18 particular facts and circumstances involving the asset and
19 these debtors on the petition date.

20 We have addressed in our reply papers that were
21 filed at length the various objections, but I want to just
22 touch on a few points in summary fashion at this time.

23 Professor Howell, in her testimony today, touched
24 on the question of FTT, one of the areas she looked at.
25 That's the native token of the FTX exchange. And her

1 conclusion and that of the debtor is that that token has no
2 fundamental value because it has no utility outside of an
3 operating exchange which did not exist on the petition date,
4 as Mr. Diederich updated the Court and the stakeholders this
5 morning, will not exist at this point going forward.

6 Without an operating exchange, every source of FTT
7 value is eliminated. Professor Howell explains that the
8 market prices for FTT were unreliable and likely distorted in
9 the period leading up to the petition day due to concealed
10 fraud at FTX.

11 Professor Howell's report and supplemental
12 declaration explains the valuation of claims based on futures
13 positions, as though futures positions had been closed out by
14 the holder at the petition time. One of the objectors that
15 has been active asking questions today is such a holder of
16 futures positions.

17 The debtor's view, as expressed by Dr. Howell, is
18 that this is the most consistent way that future contracts
19 operated, and consistent with how futures contracts operated,
20 and with the fact that the debtors ceased operations and
21 filed for bankruptcy. That testimony, as an evidentiary
22 matter, is now unrefuted and in the record of the Court.

23 Futures traded on FTX were not an exchange of
24 assets between the parties but rather resulted in fiat
25 denominated profit and losses for that transaction's betting

1 on winners and losers.

2 Perpetual futures, which are common with respect to
3 digital assets, use a funding mechanism in which two parties
4 in the contract make periodic payments depending on whether
5 the future's price is above or below the price of the
6 underlying reference asset. As the price of the P&L changes,
7 the customer's P&L changes.

8 As explained in Dr. Howell's testimony, every day
9 the debtors conducted an exercise every 24 hours to reprice
10 supposedly mispriced perpetual futures contracts, meaning
11 that creditors would have potentially received payments
12 through this system prior to the petition date.

13 The arguments and the objections that have been put
14 forward objecting to the debtor's pricing of futures fail for
15 numerous reasons that we detail in our papers and in Dr.
16 Howell's supplemental declaration, which is, very briefly, as
17 testimony explains, that's now before the Court.

18 The debtors bankruptcy filing cannot be equated
19 with an accelerated settlement and delisting event, which is
20 the primary argument that's put forward by the (inaudible).
21 We have no evidence to the contrary. The debtors did not
22 delist the futures or underlying tokens, but rather the
23 debtors ceased operations in their entirety.

24 Second, unlike spot tokens, futures and other
25 derivatives were FTX-specific financial contracts whose

1 payoffs were inherently tied to the market dynamics of the
2 debtor's exchanges. As a result, customers with futures
3 positions on the debtor's exchanges were exposed to the risks
4 of the debtor's futures markets specifically.

5 And third, Your Honor, making after-the-fact
6 adjustments to futures prices would be inconsistent with how
7 the debtor's exchange has operated historically and could
8 certainly result in negative balances for certain of our
9 customers.

10 Repricing supposedly mispriced perpetual futures
11 contracts could also unfairly benefit those creditors who
12 could have received payments through the funding rate system
13 that's detailed in our papers.

14 The proposal that's being made is simply a
15 reallocation of value between customers and presumably, if
16 adopted, would be objectionable to other customers who are
17 not here today.

18 This highlights the issue more broadly. The
19 debtors, through this motion, have sought the most fair and
20 reasonable valuation of claims based on digital assets so
21 that we can set a fair and reasonable process and march
22 forward towards returning that value to our creditors.

23 Finally, Your Honor, I want to just note that
24 numerous of the pro se and other objectors raise different
25 versions of an objection that customers may claim a property

1 interest in certain of the digital assets.

2 The revised order that's before the Court makes
3 clear that nothing in this motion, or the order that we have
4 asked the Court to enter, seeks to address or preclude any
5 party's rights with respect to whether any digital assets
6 constitute customer or other creditor property.

7 All parties' rights reserved with such arguments
8 are fully reserved. We've discussed that issue. We've
9 announced the settlement we have with the ad hoc adversary
10 proceeding, which is the only adversary proceeding that's
11 been filed on an issue. But we understand that those
12 arguments remain outstanding for certain creditors. They can
13 be asserted. We will address that issue in connection with
14 plan confirmation.

15 But there is nothing about anybody asserting I have
16 a property right that is precluded by entry of the order
17 we're asking today. And we clarified that and made that
18 expressly clear in the revised form of order.

19 The revised order similarly contains some other
20 reservation of rights, provisions to make clear that certain
21 other issues that could arise in this case are unaffected by
22 this order. That has -- we've worked with other parties to
23 address.

24 And of course, all valuation arguments with respect
25 to the four tokens is deferred until the March hearing are

1 fully reserved, as we've been talking about over the course
2 of the day.

3 So I'll pause there, Your Honor. I'm happy to take
4 questions from the Court or let others speak. I would
5 request time on rebuttal to the extent based on any arguments
6 that are made today with respect to any of the still
7 outstanding objections.

8 THE COURT: Okay. Thank you. I have no questions
9 at this time.

10 MR. GLUCKSTEIN: Thank you, Your Honor.

11 THE COURT: Let me hear from anyone who wants to
12 speak in support of the debtors.

13 MR. PASQUALE: Thank you, Your Honor. Excuse me.
14 Ken Pasquale from Paul Hastings for the committee. Your
15 Honor, for such an important motion, I actually have very
16 little to say right now. And the reason for that is the
17 committee has been working very closely with the debtors over
18 a number of months with respect to the evidence and the
19 arguments that are being presented today.

20 For the committee in its role as a fiduciary for
21 all creditors, the committee can't pick winners and losers.
22 And so our role, as we saw it in this process, was to make
23 sure that the methodology being applied to value all of the
24 digital assets as of the petition date was fair and
25 reasonable, and that the methodology was appropriate across

1 the board for all creditors, regardless of their digital
2 assets, holdings. And we think that the presentation, the
3 evidence today, Your Honor, satisfies that standard.

4 The only other thing I'd like to say now, Your
5 Honor, and I'll reserve any other comments for rebuttal, if I
6 may, is just with respect to the estimation process.

7 Obviously, and I think Mr. Moseley testified well
8 as to how long it would take to litigate each and every one
9 of the customer claims with respect to the value of digital
10 assets. Just look at the number of individual objections
11 that were filed to this motion raising individual issues and
12 individual values for their respective holdings. To litigate
13 all of those would take us -- I won't even estimate.
14 Certainly would not make the committee or our constituency
15 happy to delay confirmation. And more importantly, what
16 follows. And that's the distributions.

17 The other thing, Your Honor, that I think is
18 important to note is the uniformity that the estimation
19 process would provide if the debtors and the estates had to
20 litigate each and every one of the individual's claims on an
21 individual basis.

22 We can talk about collateral estoppel and the
23 like, but none of those findings would be binding on any
24 other customer. They would be binding, perhaps, on the
25 estates. It's obviously a process that is completely

1 inefficient and not equitable for the estates, generally, and
2 the creditors, specifically.

3 So unless the Court has any questions, I'll defer
4 any further comments.

5 THE COURT: No questions. Thank you.

6 MR. PASQUALE: Thank you.

7 THE COURT: Anyone else would speak in support of
8 the motion?

9 MR. MINTZ: Good afternoon, Your Honor. Doug
10 Mintz of Schulte, Roth and Zabel for Steadview Capital,
11 Mauritius Limited, which holds a preferred equity, holds
12 preferred equity interests, which are detailed both on Docket
13 450, as well as Steadview's proofs of interest.

14 Last month, we read the original motion to
15 estimate as well as the order and Dr. Howell's testimony and
16 the conversion table to seek to value preferred equity
17 somehow at \$0. We were concerned in particular, with, among
18 other things, paragraph 33 of the motion, paragraph 85 of Dr.
19 Howell's testimony in lines 509 through 521 of the conversion
20 table.

21 We reached out shortly thereafter to debtor's
22 counsel and raised this concern with them, which they
23 addressed with us very constructively. And we appreciate
24 that. We worked collaboratively with them as well as some
25 others, and they acknowledged that wasn't their intent. We

1 worked together to develop what is now paragraph 5 of the
2 order, which I believe makes clear the intent here is not to
3 estimate the preferred equity in any way, shape, or form and
4 reserve those issues for another day. I'll let the language
5 speak for itself. But we appreciate that those issues have
6 been reserved, presumably, for some process as part of
7 confirmation.

8 I don't have anything else for Your Honor. If you
9 have any questions, happy to answer them.

10 THE COURT: No questions. Thank you.

11 MR. MINTZ: Thank you, Your Honor.

12 THE COURT: Anyone else in support of the motion?
13 All right, turn to the objectors. Who wants to go first?

14 MR. BIELLI: Good afternoon, Your Honor. Thomas
15 Bielli on behalf of RS Tech Limited. Can Your Honor hear me
16 okay?

17 THE COURT: I can. Thank you.

18 MR. BIELLI: Your Honor, my client's objection
19 falls into three categories. First one being procedural,
20 second one being substantive, the third one being the
21 methodology.

22 Procedurally, this is an unfair process, Your
23 Honor. Frankly, this is a violation of my client and every
24 other creditor subject to this motion's due process. This
25 was filed two days after Christmas on December 27, the week

1 between Christmas and New Year's on 14 days' notice.
2 Contains two expert reports totaling over 100 pages and
3 predicated on thousands of pages of data. It curtails our
4 client's and other creditors' rights to the normal, ordinary
5 claims reconciliation and adjudication process that was
6 outlined by the debtor's expert.

7 That's because what this is, ultimately, is a
8 claim objection or claim disallowance motion. Claims are
9 deemed allowed when they're filed, Your Honor. The debtors
10 then filed an objection, claim objection, to which creditors
11 have a right to respond to. There's limited discovery filed
12 by an evidentiary hearing and this Court's adjudication of
13 that claim.

14 But that won't happen here. What's being proposed
15 by these debtors turns the ordinary normal claims
16 adjudication process on its head.

17 THE COURT: This isn't a claims adjudication
18 process. It's an estimation process. The Courts are very
19 clear. An estimation process is subject to the discretion of
20 the bankruptcy judge.

21 MR. BIELLI: Are they are used, Your Honor, in
22 asbestos, mass tort claims. And the debtors cite to those
23 cases in their motion. But they don't link it to this case
24 here, Your Honor, because there's estimation -- in those
25 cases, the estimation process is akin to a trial process

1 where those claims do get adjudicated. Experts are retained,
2 they're examined. That's not going to happen here. But I'll
3 move on, Your Honor.

4 THE COURT: It's not required. There are other
5 cases where the courts have said I could look at the
6 pleadings of the case and decide the value on an estimated
7 basis of that claim.

8 MR. BIELLI: I understand, Your Honor, and I do
9 understand that. And I know that other courts in other
10 crypto cases, like the Celsius case, for example, up in the
11 southern district, under Rule 1009, the judge ordered that
12 the debtors take this digital asset conversion table, attach
13 it to their amended Schedule AB, and then list it. Because
14 that's what we're doing, Judge. We're valuing the debtor's
15 assets. We're doing a liquidation analysis. That's what
16 this is.

17 Dr. Howell testified on the stand that what she
18 did at the debtor's direction was a liquidation analysis, and
19 it took her 80 hours. We had the debtor's expert, Mr.
20 Moseley, testify that his process took two to three months.
21 And for Your Honor to rule or for Your Honor to make a
22 finding that we have this undue delay, unduly delayed the
23 bankruptcy process, we had expert testimony today, or
24 testimony from the debtor and testimony from Dr. Howell. She
25 spent 80 hours. Mr. Moseley spent two to three months.

1 There's delay. And delay is okay because Your
2 Honor has a pretty big job to do here. And delay is okay
3 because the creditors, committee's constituents, everybody on
4 Zoom, they want Your Honor to get it right. They want you to
5 get it right. They don't want to have this rushed by the
6 debtor and their expert, who, quite frankly, have been
7 working on this since the summer, and then file it, lob it
8 out two days after Christmas.

9 THE COURT: Did you file a motion for a
10 continuance?

11 MR. BIELLI: No, Your Honor. I'm going to move on
12 to the substance, Your Honor. In the Dow case, the
13 bankruptcy law's general rules to liquidate, not to estimate,
14 Your Honor. I tied that into the procedural objection. Your
15 Honor would need to make a finding that the normal, ordinary
16 claims process will unduly delay these bankruptcy cases. The
17 bankruptcy process in itself. The debtors haven't made that
18 showing, Your Honor.

19 And as I mentioned, the delay is okay. It's
20 unduly delaying the case that's the problem, not just any
21 delay. Some delay is justified, and Your Honor will need to
22 make that finding.

23 In some of the other cases I knew Your Honor was
24 getting to, especially with respect to the mass torts that I
25 mentioned, those estimations were done when a distribution

1 was imminent, and the distribution would be delayed if this
2 estimation wasn't the case. That's not where we are in this
3 case. In fact, Your Honor, these debtors filed a plan, a
4 good faith plan, on December 16th that now is going to be
5 changed based on something filed eleven days later, which was
6 this motion.

7 What Your Honor didn't mention or, Your Honor,
8 excuse me. What the debtors didn't mention today, and I
9 didn't hear anything about this, was other types of
10 valuations of the petition date. We heard a little bit about
11 the books and records, but we didn't hear as to -- or at
12 least in depth -- as to why the debtors -- because, again,
13 we're valuing the debtors assets is what they're seeking to
14 do, and they're calling it the claims, but they're valuing
15 what the debtors holding as of the petition date, presumably
16 the debtors books and records, has this information.

17 We've heard testimony from Mr. Moseley was really
18 the response to that was we didn't rely on that, and it
19 stopped there. I don't want to put words in his mouth -- or
20 we didn't trust that information, and it stopped there
21 without any further information. I think that's important,
22 Judge.

23 THE COURT: Well, let me ask you a question. You
24 asked questions to Mr. Moseley about why the debtors didn't
25 do this and ask the claimants to file their proofs of claim

1 in dollar amounts instead of the amount of crypto they held.
2 In particular, type of crypto they held. But whether they
3 did it as the amount of crypto they held or the dollar
4 amount, I'd be in the same position. I'd still have to
5 determine whether that dollar amount was correct or not. I'd
6 still be estimating the claims.

7 MR. BIELLI: Well, Your Honor, if they -- Your
8 Honor, allow me on this. If a creditor put in their proof of
9 claim, if they listed a dollar amount, then I'd argue that
10 that claim is liquidated. And Your Honor has to make two
11 findings. You have to make a finding that these claims are
12 either unliquidated and contingent, and that the claims
13 adjudication process or liquidating those claims is going to
14 unduly delay this case.

15 THE COURT: Well, I think you're making the case
16 for why it would unduly delay the case. Because if someone
17 put in their proof of claim, I held Bitcoin on the petition
18 date, but I'm going to value it three months later when the
19 Bitcoin went up, now, I got a question. Okay, now, there's
20 an objection to that.

21 And then there's someone else who files -- has a
22 different type of cryptocurrency, and they say, hey, on the
23 petition date, my crypto was worth x, and now it's worth much
24 less than that. I want you to use the petition date. Now,
25 I've got to decide all those issues on an individual basis.

1 And don't forget, I've done this before. I sat on the other
2 side of this bench before. I know how this process works.

3 MR. BIELLI: I understand, Your Honor. I
4 understand what you're saying. I understood Your Honor's
5 ruling with respect to the IRS on that estimation. And it
6 will be done on the petition date, or, I'm sorry, your
7 preliminary ruling today that it will be done on the petition
8 date.

9 And if a creditor signs, under penalty of perjury,
10 their claim objection that they have Bitcoin worth x on the
11 petition date, that's deemed to be a valid claim until
12 someone files a claim objection. Well, now it isn't if Your
13 Honor grants this motion. It's not.

14 THE COURT: I'm not adjudicating the claims. I'm
15 not allowing or disallowing any claim. I'm estimating what
16 the claims are. That process happens later.

17 MR. BIELLI: I understand, Your Honor, and that's
18 all I have for my argument, and I appreciate Your Honor
19 listening to me today.

20 THE COURT: Okay, thank you.

21 MR. BIELLI: Thank you, Your Honor.

22 MR. GWYNNE: Kurt Gwynne from Reed Smith on behalf
23 of the Foundation Serendipity and Foundation Elements,
24 creditors. Your Honor, the debtors have neither a right nor
25 a need to estimate our clients' proofs of claim. Section 502

1 only authorizes the estimation of contingent or unliquidated
2 claims. On page 13, footnote 8 of the debtor's omnibus
3 reply, the debtors concede that our clients' claims are not
4 contingent.

5 Our clients' claims also are not unliquidated. As
6 the debtors acknowledge in paragraph 30 of their omnibus
7 reply, our clients did file claims in U.S. dollar amounts,
8 approximately 300 million, based on a conversion rate for
9 MAPS and OXY tokens. And by the way, our proofs of claim,
10 Your Honor, were filed based on the values on the petition
11 date or very near the petition date, whichever information
12 was available.

13 But the debtors argue in paragraph 27 that a claim
14 is liquidated when the amount of it can be determined with
15 relative ease. Well, it really doesn't get much simpler than
16 the liquidation of a claim here, Your Honor. You take the
17 number of tokens you have, and you multiply them by the
18 conversion rate. It's that easy.

19 The debtors dispute the claim. They may dispute
20 the amount of the claim, they may dispute whether the
21 conversion rate is appropriate, but the claim itself is
22 easily liquidated. It's no different than if a debtor was
23 objecting to a creditor's -- a secured creditor's claim on
24 the basis that the interest was calculated incorrectly.
25 Maybe they used the wrong SOFA or the wrong base rate. It's

1 similar to that situation. This is a dispute regarding the
2 claim. It's not a dispute regarding whether the claim is
3 liquidated.

4 For that reason alone, as a matter of law, Your
5 Honor, 502(c) does not apply, and the debtor cannot estimate
6 our client's claims regardless of any alleged delay in the
7 confirmation process.

8 Now, even assuming that our clients' claims are
9 unliquidated, and they're not, the debtor still cannot
10 estimate the claims because there would be no undue delay in
11 the administration of the case with respect to resolution of
12 our claims in the normal process. There should be neither a
13 delay nor an unduly long delay for several reasons.

14 First, Your Honor, I do want to point out, this is
15 a problem that the debtor has created itself, and this motion
16 was the solution to the problem they created. The debtors
17 filed their schedules. There was testimony. Well, at that
18 time, we weren't comfortable with the available conversion
19 rates. And I think technically what the witness said is he
20 wasn't comfortable with the debtor's systems regarding what
21 the conversion rate was.

22 But the debtors have filed multiple amendments to
23 their schedules. And in fact, on the exhibit list for today,
24 they listed amended schedules that were filed in June of
25 2023, and then again in January 23rd or 24th of 2024.

1 When the debtor files its amended schedules, it
2 can list claims as disputed. It can put the dollar amounts
3 in there. It could list all the two million claims, list
4 them as disputed. If the creditors don't object or don't
5 file a proof of claim, then that would resolve those claims.
6 But the debtor chose not to do that.

7 The other thing the debtor could have done is, in
8 the bar date motion, not to just ask creditors to file proofs
9 of claim in the amount of the tokens that they held, but to
10 put a dollar value on them. Because in many cases, the
11 debtor may agree with them. The debtor may use the same --
12 would have used the same conversion rate, or one very close
13 to it.

14 And I do agree, Your Honor, if someone files a
15 claim and they're valuing it in a dollar amount, but they're
16 not using the petition date, then that would be wrong. And
17 that claim is one that debtor may be able to object to. But
18 I don't know that it's an estimation. It's that the claim is
19 improper because it's using the wrong conversion rate.

20 THE COURT: Wouldn't I have to look at every
21 single claim and the debtor would have to look at every
22 single claim to see if when the claimant filed their proof of
23 claim that the dollar amount they put in was actually the
24 dollar amount on the petition date and not some other date?

25 MR. GWYNNE: Yeah, but the debtor has to do that

1 anyway. Even when Your Honor estimates claims, right, the
2 debtor has to look at each individual claim and determine
3 what the value of that claim is based on your ruling. They
4 have to do that anyway, either in objecting to the claim or
5 determining, okay, Your Honor says -- like you said today --
6 this is the relevant date for the valuation of creditors'
7 claims to petition date.

8 So debtor is going to have to make sure claims
9 comply with that. Just estimating them and saying that's
10 true and waving the magic wand doesn't mean that someone
11 doesn't have to review the claims to make sure that they
12 comply with your ruling. That has to happen in any event.

13 THE COURT: But they're estimating them as a
14 whole, not one off. And I don't have hundreds or thousands
15 or tens of thousands or hundreds of thousands of objections.
16 When the debtor files an omnibus claim objection and all of a
17 sudden I've got thousands and thousands of claimants filing
18 objections saying, wait a minute, no, that's not how I valued
19 it. Or they're saying, wait a minute, I didn't hold one
20 Bitcoin. I held three Bitcoins. Or, no, I didn't do this.
21 I didn't do that. I have to do them individually. That
22 process would take forever. Tell me how I would shortcut
23 that process.

24 MR. GWYNNE: Well, Your Honor, I don't know that
25 you need to shortcut that process here, but I think I already

1 said how it could be shortcut. One is if the debtor filed
2 amended claims and you list the claims with the appropriate
3 amount that you think the claim should be asserted in. If
4 the creditor files a proof claim, then it's challenging. If
5 it doesn't, that amount is binding. Or you list it as
6 disputed. And if they don't file a proof of claim, then that
7 amount governs.

8 But that's a lot fairer than this process, Your
9 Honor, which was started between Christmas and New Year's Eve
10 and giving people 15 days' notice to deal with what really
11 amounts to a disallowance of claims.

12 THE COURT: I'll ask you the same question. Did
13 you file a motion for a continuance?

14 MR. GWYNNE: We did not, Your Honor, but we had
15 negotiate it -- we negotiated, as I indicated earlier, that
16 our claims aren't being valued today. The only question for
17 our clients is whether or not estimation is appropriate. Our
18 claims are not going to be estimated or valued based on Your
19 Honor's ruling today, and that won't prejudice us in any way
20 as the agreement that we have with the debtor is set forth in
21 their revised proposed order.

22 By the way, that's important because this proposed
23 asset liquidation discount is unprecedented, has nothing to
24 do with the creditor's claim. It's the debtor's assets. But
25 that -- we'll deal with that later in connection with our

1 claim.

2 We're prepared to proceed on the liquidation of
3 our claim in the first week or two of April. The debtor is
4 proposing the estimation of our clients' claims, the OXY and
5 MAPS claims, on March 20th. That's not undue delay to push
6 it back for a couple more weeks. That, I think --

7 THE COURT: That issue is not in front of me
8 today.

9 MR. GWYNNE: Well, but the issue of whether
10 estimating our claims or not is appropriate is before you.
11 And what I'm telling Your Honor is that we are prepared to go
12 forward on a regular litigation of the claims in early April,
13 and I think that should be relevant to Your Honor and whether
14 you decide that estimation is appropriate with respect to our
15 clients' claims.

16 And that's just really a few more weeks more than
17 what the debtor is proposing for an estimation hearing, and
18 we're saying we don't need the estimation hearing. Let's
19 just have the claims allowance or disallowance hearing a
20 couple of weeks later.

21 Additional month, I don't think it's undue delay
22 when you look at the process here. The debtor's witness took
23 approximately four months to prepare their expert report. We
24 were given 15 days over the holidays to respond. We did
25 respond. We have retained experts as a backup plan, have an

1 agreement that if we have to have an estimation, that it
2 wouldn't be today, it would be in the future. But reserve
3 the right to say that we shouldn't have an estimation
4 hearing. We should have an allowance or disallowance of our
5 claim.

6 Dr. Howell, according to her report, reviewed over
7 200 legal documents, articles, books, studies, websites, and
8 data sources. The creditors should have a similar
9 opportunity, Your Honor, to conduct that type of review and
10 analysis. And of course, they have another expert report
11 from Mr. Lu. And all of these were being -- all of that work
12 was being done when the creditors had no idea what was
13 coming. Debtors counsel says, we noticed this to people
14 before.

15 All the debtors said was at some point they would
16 come up with valuation. They never said we would try to
17 estimate everyone's claim on 15 days' notice over the
18 holidays. That was never noticed to the creditors. And Your
19 Honor does have -- if estimation is proper, under 502(c),
20 Your Honor does have discretion to determine the method. And
21 what we're saying, Your Honor, is if you're going that route,
22 we should be given a little more time, fair opportunity, and
23 just have --

24 THE COURT: You've been giving that. Are you
25 speaking on behalf of other creditors?

1 MR. GWYNNE: Well, no, I'm speaking on behalf of
2 our client. And Your Honor, when you talk --

3 THE COURT: You already got that taken care of.
4 There's going to be another hearing.

5 MR. GWYNNE: Right. But we don't have -- the
6 issue we don't have taken care of is whether we're going to
7 go to that estimation hearing or we're going to have a claims
8 allowance hearing or disallowance, a regular hearing, not an
9 estimation.

10 The debtor's witness testified that our clients'
11 claims are less than half a percent of all the claims. If
12 the concern is we need to give an estimate in our disclosure
13 statement as to the recoveries, and we need to give an
14 estimate that has some reliability so people can determine
15 whether to vote in favor of the plan or not, well, then not
16 estimating our clients' claim still gives everyone else 99.5
17 percent certainty because our claims are a small subset, as
18 debtor's counsel said. We're just actually a part of that
19 small subset of claims that aren't being estimated today.

20 If the debtor gets the relief it's asking for and
21 all the other claims are estimated, then there's really no
22 reason that our claim needs to be estimated at that point,
23 because now we don't have all these claims that have to be
24 estimated. We have a small handful.

25 And I would request that Your Honor give us that

1 opportunity to have the regular claims hearing, because the
2 debtor is seeking to disallow our claims in full. And that's
3 significant. And when you're determining the type of
4 estimation proceeding or whether or not -- the Third Circuit,
5 you mentioned Bittner earlier, and the fact that Bittner said
6 that, in some instances, well, you had indicated there was
7 case law saying, in some instance, you can maybe just decide
8 estimations on the papers.

9 But in Bittner, on page 135, the Third Circuit
10 said, in some cases, maybe a rare or unusual case, but in
11 some cases, you might actually need a jury trial to estimate
12 a claim. So obviously, there's a big, wide disparity in what
13 might be required to estimate a claim. And here, rather than
14 fight about that, seems easiest that if the debtor gets the
15 relief it's looking for today, that we just deal with our
16 claim on the claims allowance process, not an estimation
17 process.

18 That's all I have, Your Honor, unless you have any
19 questions.

20 THE COURT: Thank you. No questions.

21 MR. GWYNNE: Thank you.

22 THE COURT: Anyone else?

23 MR. O'DONNELL: Your Honor, Dennis O'Donnell, DLA
24 Piper, again, on behalf of MAPS Vault Limited. Your Honor,
25 MAPS Vault holds over 7 billion tokens, MAPS, OXY, and Serum

1 tokens, which, based on publicly available prices on the
2 petition date, were valued, as we state in our proofs of
3 claim, at approximately \$525 million.

4 If the debtors estimation, as currently proposed,
5 were to be accepted, all but a couple of million dollars of
6 that \$525 million would go away. So, clearly, we have a lot
7 at stake here and want to make sure that this process works
8 as best as it can for us.

9 As Mr. Gluckstein indicated, we have been among
10 the group, I think we were the initial member of the group,
11 working cooperatively with them to come up with a process
12 that works. And we do have a schedule in place which
13 involved the delivery of an expert's report this past week, a
14 rebuttal coming from them next week, and discovery to follow
15 that, which we believe covers most of what we need to cover.

16 But that being said, we still think that we have
17 an entitlement to more because we don't think that
18 estimation, as presented here, with respect to the millions
19 of claims, should necessarily control how a very small subset
20 of the claims, which includes the MAPS, OXY, and Serum
21 claims. I mean, basically the 71 claims that Professor
22 Howell referred to amongst the 71 tokens, amongst the 1,321
23 is a subset that should have really been on a separate track
24 to start with. And of those 71, I think there's only a
25 fraction of those which may well be represented by the

1 parties who have now been moved into this later hearing that
2 should be entitled to a separate process.

3 Whether we call that process estimation or
4 allowance may be at this point a matter of just terminology.
5 I think what we have on the table going forward will be a
6 full process with discovery and a hearing, an evidentiary
7 hearing with witnesses that will take place as proposed now
8 on March 20th.

9 But again, because I think we have an entitlement
10 that I'll get to in a second, I would only ask that we have
11 flexibility built into that process. We now have four or
12 five, six different participants in it. It may be that
13 things need to get moved around. It may be that hearing
14 needs to get moved to some extent. And based on the fact
15 that I think properly there should have been an allowance
16 hearing, that flexibility should be acknowledged.

17 And to reiterate much of what Mr. Gwynne said,
18 there are two reasons why, at least as to our clients, we're
19 not talking about the millions and millions that would create
20 great headaches for the Court and the debtors. We're talking
21 about this small subset of customers here which include my
22 client.

23 As to them, number one, their claim is, from their
24 perspective, I think from any reasonable perspective,
25 liquidated. As Kevin Lu, one of the debtor's witnesses,

1 acknowledged, there are parties -- maybe it was Mr. Moseley.
2 There are many parties who did, in fact, include dollarized
3 amounts, dollarized claims on their proofs of claim, and our
4 client was one of them.

5 And they did that not, as the debtors would
6 portray it, as a customer's estimate. They did a very simple
7 calculation which comports with what doesn't require
8 estimation, which is that something that could be determined
9 with precision by a pure mathematical computation.

10 And what they used here was an input -- with two
11 inputs, the number of tokens they have multiplied by a
12 publicly available, trustworthy source for what the price was
13 on the petition date. They used Coin Market Cap, which is
14 the same source that is acknowledged in Professor Howell's
15 report as a source to which she went when Coin Metrics could
16 not provide the source or provide pricing data for that date,
17 and it's also a source that she cites 51 times in her report
18 for other reasons.

19 So again, a reliable source, quoting a price
20 applicable on the petition date, multiplied by the number of
21 tokens that no one disputes that were held by our clients on
22 that date. That sounds to me like more than a customer's
23 estimate and suggests that the claim is, in fact, liquidated.
24 The fact that the debtors want to dispute it doesn't change
25 the fact that it's liquidated. It simply means they're going

1 to dispute it as they would any other type of purportedly
2 liquidated claim.

3 There's also no undue delay that would be caused
4 here by turning this into a full-fledged 502 AB allowance
5 scenario, because I think we'd be effectively somewhere where
6 we are already. Even though the debtors wanted to do this in
7 about three weeks, we're now talking about doing it in about
8 two to three months with flexibility.

9 Again, because I think we would have an
10 entitlement, we have every right to argue as to this subset
11 of creditors that this should have been teed up as an
12 allowance process. Going forward with what we have on the
13 table as modified to accommodate everyone who's now part of
14 the mix here should be something that, again, if we need to
15 come back to the Court, we will come back to the Court to
16 talk about whether that needs to be modified.

17 As currently memorialized, it is not actually an
18 order. I think what we probably need to do is to build that
19 schedule into some kind of order that will permit
20 modification if need be, if issues arise. Don't foresee them
21 at the moment, but if issues arise, we may need to come back
22 to the Court to address them.

23 THE COURT: Thank you. Anyone else wish to be
24 heard?

25 MR. MCNEILL: Good afternoon, Your Honor. For the

1 record, Steve McNeill from Potter, Anderson & Corroon here on
2 behalf of the Layer Zero Group. Your Honor, unlike the
3 others, I bring good news, Your Honor. During the course of
4 the hearing, I was able to resolve the remaining aspects of
5 my client's objection with the debtors.

6 Just for background, we had asserted -- my client
7 holds potential 502(h) claims related to an avoidance action
8 that's been filed against them. We asserted that 502(h)
9 claims were different and should be excluded from the
10 process.

11 The debtors had added some language to the
12 proposed order carving out those claims. We had some
13 additional tweaks. That is in, I believe, it's paragraph 8
14 of the proposed order that was filed this morning.

15 Just wanted to note for the record that we have a
16 couple of additional, little bit of modified language to that
17 paragraph, Your Honor, and specifically paragraph 8(b).
18 Right after the (b) we are adding have any precedential value
19 or before the word prejudice that's there currently, and
20 right below that treatment of any claims asserted in, we are
21 adding or arising from before any action, Your Honor. And
22 with those changes, my client's objection is resolved. I
23 would ask counsel for the debtor to confirm that on the
24 record. But that is the resolution we have agreed to, Your
25 Honor.

1 THE COURT: Okay. Thank you. Anyone else in the
2 courtroom? Mr. Lusk, I see you have raised your hand. Do
3 you want to say something?

4 Can you give me co-hosting rights, please?

5 Mr. Lusk?

6 MR. LUSK: Yes, Your Honor.

7 THE COURT: Can you turn on your camera? You need
8 to turn on your camera, please, so I can see you.

9 MR. LUSK: I cannot start video because the host
10 has stopped it. Could someone please report that problem?

11 THE COURT: Mr. Lusk -- we need to give him video
12 back. Once you disconnect him from video, he can't turn it
13 back on again unless you give permission. There you go. Go
14 ahead, Mr. Lusk.

15 MR. LUSK: Okay, great. Thank you. So, I would
16 like to raise an objection to the motion in terms of the
17 generality of the language envisaged in the second paragraph.
18 The debtors refer generally to authorization to determine the
19 value of claims based on digital assets, and in my view, this
20 is far too general.

21 In my particular case, I held at the petition date
22 or had deposited on the ftx.com exchange digital assets, and
23 I received afterwards a schedule in which I saw that the
24 debtors had purported to mischaracterize my claims as general
25 unsecured claims in an indeterminate amount. However, they

1 did correctly specify the precise amount of crypto assets I
2 held on the exchange.

3 So I filed a proof of claim in which I objected
4 against the mischaracterization of the nature of my claim and
5 stated very clearly that my claim is, in fact, a claim for
6 restitution in specie of the particular crypto assets which
7 are specified in the claim.

8 These claims are held in accordance with the terms
9 of service interest under English law as specified therein,
10 and I requested relief in the form of immediate return of my
11 crypto assets because these assets are my property. They are
12 not the property of the debtors. They cannot possibly be
13 part of the debtor's bankruptcy estate, and therefore, they
14 cannot be a subject of any estimation that Your Honor may
15 make which can only relate to the debtor's bankruptcy estate.

16 The language which is set forth in the proposed
17 motion is far too broad, and it doesn't resolve the issue
18 that the debtors have issued schedules in which claims are
19 mischaracterized. It does not take into account that there
20 are on the docket objections, including objections at the
21 proof of claim stage to their miscorrect characterization of
22 such claims.

23 I have filed not only an objection at the proof of
24 claim stage on the 29th of September 2023 but I also have
25 objected on the 9th January of this year to the debtor's

1 motion to estimate claims, and on the same basis that they
2 have mischaracterized the nature of my claims, I claim
3 immediate restitution in specie of my crypto assets because
4 these are not assets of the debtors, they are my assets as is
5 specified in the terms of service.

6 The debtors have not disputed that at any stage,
7 despite what Mr. Gluckstein has said for the debtors, at no
8 stage have the debtors responded in any way to either of my
9 objections. Much time has passed. It must therefore be
10 understood that the debtors have nothing to contend contrary
11 to what I have stated in objection at proof of claim stage
12 and in the present month.

13 And therefore, I would request not only that the
14 (inaudible) be suitably amended in the proposed order to
15 carve out the case of my claim and that of the further FTX
16 customers in my position, but also that there is no reason
17 whatever why the debtors should not now be awarded, with
18 immediate effect, to restore return my crypto assets to the
19 addresses that I've specified in my most recent objection,
20 dated the 9 January and filed on the 12th of January. It is
21 document 5684 on the docket.

22 THE COURT: Mr. Lusk, I'll let Mr. Gluckstein
23 respond to you in more detail, but as was discussed at the
24 beginning of the hearing or the opening statement by Mr.
25 Gluckstein, the issue of whether or not any particular

1 claimant has title to the crypto that is being held by the
2 debtor is an open issue, and they have included in their
3 order language to make clear that that issue is not being
4 decided by the estimation process, and it is something that
5 can be raised at a later date. So that's something that will
6 be resolved later on.

7 For today's purposes, I'm being asked to estimate
8 the claims so that the debtors can file their disclosure
9 statement in order to solicit votes on the proposed plan that
10 they are putting forward for resolving the bankruptcy case.
11 Allowance of claims or disallowance of claims happens at a
12 later time. What I'm doing today in an estimation process is
13 not allowing or disallowing any particular claim. It's only
14 estimating the claims for purposes of allowing the debtors to
15 move the case forward. Did I make that clear? Is that
16 understandable?

17 MR. LUSK: The language which appears in the
18 document referred to in the agenda, which is Document 5202
19 filed on the 27th of December 2023, states in the proposed
20 order at item two, the debtors are authorized to determine
21 their claim based on digital assets and fiat currency for the
22 purposes of any plan in these Chapter 11 cases, based on the
23 value set forth in the digital assets conversion table
24 attached hereto, Exhibit 1. It is this language which I say
25 is too broad.

1 THE COURT: Well, that language is in the motion.
2 And the only thing that's going to govern here is the order
3 that I enter, and the order that the debtors have put forward
4 says that the issue of ownership is still an open issue and
5 is not being decided today. So it's my order that governs
6 how the process goes, not what the debtors may or may not
7 have put in their motion seeking the estimation process.

8 MR. LUSK: I understand (inaudible) speaking
9 against the motion.

10 THE COURT: Right. But as I said, that issue, the
11 debtors went back later and added additional language to say
12 -- to resolve this issue, because it had been raised by other
13 claimants that there was a question about who owns the
14 crypto. And the debtors have resolved that by including
15 language in the form of order that says that's still an open
16 issue. It's not being decided today.

17 MR. LUSK: Okay, well, I think we have clarity on
18 the point.

19 THE COURT: Okay.

20 MR. LUSK: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. LUSK: Yes, sir.

23 THE COURT: All right, Mr. Gluckstein, any
24 response?

25 MR. GLUCKSTEIN: Yes, Your Honor, Brian Gluckstein

1 for the debtors. Happy to -- I'd like to make just a few
2 points in rebuttal on what we've heard here from the
3 objectors, starting with Mr. Lusk's point there.

4 Your Honor obviously hit the issue on the head.
5 What I'm hearing him articulate is effectively a property
6 argument. We have added what's in paragraph 4 now of the
7 proposed form of order, a clear reservation of rights on that
8 issue, as I discussed earlier.

9 Obviously, the debtors reserve all of their
10 rights, as well, with respect to those arguments, but they're
11 not before the Court today.

12 With respect to the other objectors, what we heard
13 from Oros (phonetic) about process. We're here, Your Honor.
14 We're having an evidentiary hearing today. They could have
15 served discovery on us. They could have sought to take
16 discovery of our experts. They didn't do so. The reference
17 with respect to the way this was done in some other cases, it
18 was a reference to Celsius by counsel, where we just tacked
19 some schedule on. Our view was this process is actually
20 providing due process. We are not unilaterally deciding what
21 is a complex question, which I'll come to in a moment.

22 This idea that some delay is fine, it's just fine
23 to have delay. Well, the debtors don't believe it's fine.
24 We don't believe our creditors. Maybe Oros thinks it's fine.
25 But we've certainly heard from the creditors' committee and

1 we've heard from many of our creditors directly. They want
2 their money back. And as we've been talking about all day,
3 the debtor's job here is to maximize the value of these
4 estates and to return that value to our creditors. And we're
5 working hard to do that, and this process is a key part of
6 that effort.

7 This idea that was raised by the MAPS and OXY
8 holders, well, let's just carve them out. It's fine. We can
9 get the relief from everybody else today and we can just
10 carve them out and do something different. That's precisely
11 the problem, Your Honor. We need a comprehensive process
12 where we're estimating the value of these assets for all
13 holders. There are other holders of MAPS and OXY tokens. We
14 need their claims valued. There's nothing special about the
15 fact that these holders stepped forward with counsel and
16 said, I don't want to be part of a 503(c) estimation. I want
17 a claims objection process.

18 Other people presumably might want that as well.
19 But as we've been talking about all day, it's simply not
20 practical for the purposes we're talking about here, which is
21 to be able to advance these cases through confirmation and
22 through distributions, we need to set the value of the
23 digital assets. We need to do it in a comprehensive way and
24 in a way that is transparent and that is fair to everybody on
25 an aggregate basis. And we think we've done that.

1 Certain of these holders have come forward. These
2 claimants have come forward and said they needed some
3 additional time for expert discovery. They intended to bring
4 forward a competing expert on the valuation of these few
5 tokens. And we understood and said, okay, let's work on a
6 process with the understanding that we have to get to an
7 estimation outcome decided by Your Honor that is consistent
8 with the case timeline and the process we've been talking
9 about. That schedule was agreed to.

10 Now, I'm hearing maybe a little bit of
11 backtracking from that this afternoon. So we will get that
12 schedule in front of Your Honor. But we've been proceeding
13 on that schedule, and we have been constructively moving that
14 process forward that will get an answer not just for the
15 movants here, but on evaluation of those tokens so that Mr.
16 Moseley and the debtor's team can do the necessary
17 calculations to advance the disclosure statement, to advance,
18 ultimately, confirmation and distributions out to creditors,
19 if and when, we hope, a little later this year, a plan is
20 confirmed.

21 THE COURT: Well, let me ask you a question.

22 MR. GLUCKSTEIN: Yes.

23 THE COURT: You indicated that the debtors are
24 planning on issuing or sending out their disclosure statement
25 in February. Correct? But I'm not going to have hearings on

1 these other estimation motions until March. How is that
2 going to affect the process here?

3 MR. GLUCKSTEIN: What we have said, Your Honor, is
4 that we will file an updated plan and disclosure statement.
5 Our case timeline contemplates that we will have a decision
6 from Your Honor on these issues before we begin the
7 solicitation process. And we ask Your Honor to enter the
8 solicitation order, so effectively prior to our disclosure
9 statement hearing, so that at the time -- and our
10 solicitation motion expressly contemplates using these
11 values.

12 So at the time Your Honor is asked to approve our
13 disclosure statement for solicitation, we anticipate having
14 the carved out issues that have been put off here today
15 decided by Your Honor. That's consistent with the overall
16 schedule that we've been working through with the committee
17 and others.

18 THE COURT: Okay. Got you. Thank you.

19 MR. GLUCKSTEIN: The other argument we heard,
20 which I want to address, is we heard from these objectors
21 that, well, maybe our claims are different because we
22 purported to write down an amount of the value of that
23 claims. And it's a very simple calculation. We looked at a
24 pricing source and we wrote it down.

25 And that is the heart of the issue. The assets

1 that we're talking about, Your Honor, are not simply black
2 and white valuations. We heard today from Mr. Lu, the
3 process that he went through to come up with petition day
4 pricing. We heard the process that Dr. Howell went through
5 to look at not only the third party market pricing, but what
6 are the facts and circumstances of this case to value these
7 claims.

8 This is not a situation where just because an
9 amount was written down that that liquidates the claim. And
10 we knew that this issue could arise. And we wrote in our bar
11 date notice, we made very clear that because of this issue,
12 parties should come forward with their quantities of digital
13 assets and that we would be seeking relief from Your Honor to
14 actually estimate -- to actually set the value of those
15 claims, and that we considered any number that somebody wrote
16 down to be an estimate, because by definition it is. There
17 is no answer. And this goes back to the cases that we cite.

18 The question is, is this readily ascertainable?
19 Is this easy to calculate? And so, yes, once you have the
20 conversion rate, it is correct that it is a simple
21 mathematical calculation to take the number of tokens you
22 have and multiply it by the conversion rate. The question
23 is, what is the conversion rate? And our submission here,
24 and has been for many months, is that there is not a
25 liquidated claim on these digital assets until this Court

1 fixes one. And that's what we're here today to do.

2 And so we believe that all of the creditors should
3 be subject to this process. Yes, there's going to be a
4 secondary hearing. That's in recognition of certain of the
5 arguments that those creditors have stepped forward and said
6 they want to make. We recognize that some more time was
7 appropriate for that discovery and expert process, primarily
8 because they would bring forward to bring forward a competing
9 expert, we need to take discovery of their expert and
10 everything as well.

11 But it's all within the framework of 502(c), and
12 we submit that the evidence before Your Honor, between Mr.
13 Moseley and our experts with respect to process, establishes
14 not only that estimation is necessary and appropriate here,
15 which brings us in the rubric of 502(c), that the methodology
16 and the process that we have put before the Court the
17 evidence that's undisputed for purposes of today's hearing,
18 there's been no competing evidence presented, is fair and
19 reasonable to the creditor body as a whole, and we would ask
20 Your Honor to overrule the remaining objections and enter the
21 order.

22 We do have, as alluded to by counsel, one of the
23 counsels who just stood up for Layer Zero, a slightly revised
24 further form of order based on a few tweaks to some of these
25 reservation rights paragraphs that we've continued to discuss

1 over the course of today with the hearing. So in the event
2 that Your Honor were to approve the motion, we would submit a
3 slightly updated version of the order, but the substance of
4 it is unchanged.

5 THE COURT: Okay, thank you.

6 MR. GLUCKSTEIN: Thank you.

7 THE COURT: All right, let me take a recess here.
8 I'll come back and give you my decision. Let's recess until
9 3:30 and come back. Thank you.

10 (Off the record at 2:43 p.m.)

11 (On the record at 3:32 p.m.)

12 THE BAILIFF: All rise.

13 THE COURT: Thank you, everyone. Please be
14 seated. All right. It has been recognized that neither the
15 code nor the Federal Rules of Bankruptcy Procedure provide
16 any procedures or guidance for estimation and bankruptcy
17 court -- and a bankruptcy court has a wide discretion in
18 accomplishing that estimation, in re Chemtura Corp. 448 BR
19 635 at 648, Bankruptcy, Southern District of New York, 2011.

20 In estimating a claim, the Bankruptcy Court should
21 use whatever method is best suited to the circumstances. In
22 re Bittner versus Bourne Chemical Company, Inc. 691 F.2d. 134
23 at 135, Third Circuit, 1982.

24 It is conceivable that in rare and unusual cases,
25 arbitration or even a jury trial on all or some of the issues

1 may be necessary to obtain a reasonably accurate evaluation
2 of the claims. This is in re Bittner. Such methods,
3 however, usually will run counter to the efficient
4 administration of the bankruptcy's estate, and where there is
5 sufficient evidence on which to base a reasonable estimate of
6 the claim, the bankruptcy judge should determine the value --
7 determine in this case that there is sufficient basis for me
8 to determine the value.

9 Courts may employ a wide variety of means,
10 including a summary trial, a full blown evidentiary hearing,
11 or a review of pleadings and briefs, followed by oral
12 argument of counsel. In re AMR Corp., Case No. 11-15463 SLH
13 2021, Westlaw 295-4824 at 4 Bankruptcy, Southern District of
14 New York, 2021, and have specifically recognized that it is
15 often inappropriate to hold time consuming proceedings which
16 would defeat the very purpose of Section 11 -- excuse me, of
17 Section 502(c)(a) to avoid undue delay.

18 Thus, a truncated process under Section 502(c) has
19 been found to be consistent with the dictates of due process
20 of law. Debtors here seek to estimate the two million claims
21 arising from certain digital assets, including specifically
22 digital tokens. There were a number of objections, many by
23 pro se litigants. I've already ruled on the objection based
24 on debtors use of the petition date and overruled that
25 objection because the code specifically provides that I have

1 to value them as of the petition date in U.S. dollars.

2 The debtor presented the testimony of three
3 witnesses, including two experts, who provided a reasonable
4 basis for the estimation of the claims as of the petition
5 date. That testimony was unrebutted, and I conclude that the
6 testimony was credible and presented a fair and reasonable
7 basis for the determination of the estimated value of the
8 digital assets.

9 Several objectors argued that estimation was
10 unnecessary under 502(c) because the value of the claims
11 could be determined through the claim allowance process
12 without undue delay. I disagree.

13 The assets at issue are unique. An evaluation and
14 conversion to U.S. dollars using an allowance process would
15 take an inordinate amount of time in a case where the fees
16 and costs already exceed \$300 million. This is evidenced by
17 the three objectors asking for a claims allowance process.
18 Each asserts that they need discovery, and each asserts that
19 they intend to call their own experts at a future hearing to
20 estimate their individual claims. Undercuts their argument
21 that it's a quick process.

22 One objector claimed that their claim is not
23 contingent or unliquidated. Again, I disagree. The fact
24 that we have to have experts come in to give me a valuation
25 shows that it is not a liquidated claim. It's not a

1 contingent claim, but it's an unliquidated claim.

2 One objector asserted that the estimation process
3 violates their due process rights because they didn't have
4 sufficient time to review and object to the debtor's motion.
5 That party, however, did not seek a continuance, and as
6 previously noted, courts, including the Third Circuit, have
7 found that the truncated process provided for in the code
8 does, in fact, comport with due process.

9 Other objectors, including Mr. Lusk, who argued
10 before me today, said that estimation will determine the
11 question of who owns the digital assets, and it's his
12 contention that he owns them. The debtors, however, revised
13 the form of order reserving that issue for a later date. And
14 nothing I do today will affect the rights of the claimants to
15 contest ownership or the debtor's right to contest or the
16 debtor's right to contest that ownership issue.

17 Based on the evidence presented and the arguments
18 provided in the papers and at the hearing, I find that
19 estimation is appropriate, and the debtor's methodology for
20 estimating the claims is fair and reasonable, and all
21 objections to the motion are overruled. Are there any
22 questions? Anything further from the debtors for today?

23 MR. GLUCKSTEIN: No, Your Honor. Thank you very
24 much. We will submit the further updated form of order to
25 chambers, and I think that is it for today.

1 THE COURT: Okay. Thank you.

2 MR. GLUCKSTEIN: Thank you.

3 THE COURT: We are.

4 (End of Proceedings.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling February 1, 2024

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams February 1, 2024

Tracey J. Williams, CET-914
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/s/ Coleen Rand February 1, 2024

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